



February 20, 2020

VIA ECFS

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

Re: *Written Ex Parte Presentation*
Expanding Flexible Use of the 3.7 to 4.2 GHz Band, GN Docket No. 18-122

Dear Ms. Dortch:

Throughout this proceeding, no party has questioned the importance of SES Americom, Inc. (“SES”) in transitioning 60 percent of the C-band to terrestrial 5G. SES’s participation is undeniably pivotal to effectuate the Commission’s draft *Report and Order*,¹ quickly clear 280 megahertz of C-band spectrum for terrestrial 5G services, and preserve existing programming services in the upper portion of the band. SES reaffirms its steadfast support for the Commission’s objectives to ensure global leadership in 5G, and it stands ready, willing, and able to play a central role in the expedited clearing of a portion of the C-band.

Despite SES’s centrality to the C-band clearing process and its enthusiasm to begin the hard work of transitioning the band and protecting its customers, Intelsat has, at the last minute, lobbied the Commission for greater accelerated relocation payments at SES’s expense.² SES is disappointed by Intelsat’s last-minute attempt to renounce its commitments made to other C-Band Alliance (“CBA”) members and the Commission over the course of this proceeding, in aid of a transparent and baseless attempt to capture a greater share of the proposed accelerated relocation payments. In light of all that has been achieved to date, this sudden reversal in direction by Intelsat is indefensible.

The CBA was established in 2018 to promote proposals for the C-band clearing process. Given the shared use of the C-band spectrum by certain satellite operators, the CBA included

¹ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Draft Report and Order and Order of Proposed Modification, GN Docket No. 18-122, FCC-CIRC2002-01 (circ. Feb. 7, 2020) (“Draft Report and Order”).

² See Letter from Michelle Bryant, General Counsel, Intelsat, to Marlene H. Dortch, Secretary, FCC (filed Feb. 19, 2020) (“Intelsat Ex Parte”).



members representing at least 95% of the usage of the band, including both Intelsat and SES. The CBA developed detailed plans for clearing the C-band and put them on the record. The Commission reflected many of the CBA's clearing proposals in the draft *Report and Order*. The CBA has remained engaged with the FCC in developing these proposals—including following Chairman Pai's announcement of a public auction—right up to the issuance of the draft on February 7, 2020.³ Since then, and in breach of its contractual commitments, Intelsat now seeks to deny the role of the CBA going forward. It is ironic that, in the very filing in which it seeks to deny the ongoing relevance of the CBA, Intelsat relies on the CBA's filings and plans as evidence of the timing and cost of clearing.⁴

SES rejects the assertion by Intelsat that “there will be no C-Band Alliance going forward.”⁵ SES believes that there remains an important role for the CBA, and that the CBA's collaborative clearing plan is the most efficient path to clear the spectrum. Intelsat has no right to unilaterally disband the CBA, and SES will hold Intelsat responsible under its commitments. That said, SES is prepared to act on its own in the clearing process if necessary, while protecting its customers.

In any event, the CBA members agreed to the appropriate incentives for clearing the C-band spectrum, and this agreement represents the fairest and most accurate determination of how the acceleration proceeds should be allocated between the satellite operators. SES objects to Intelsat's unjustified demands for more money. If the Commission were to accept Intelsat's inchoate claims of financial distress and agree to eleventh-hour threats of holdout or bankruptcy, the agency would be acting arbitrarily and capriciously in the face of clear record evidence that SES, if anything, deserves a greater share than what the draft *Report and Order* provides. Pivoting down this path would imperil everything the Commission has worked so hard to achieve.

As the draft *Report and Order* correctly observes, eligible satellite operators will require accelerated relocation payments as incentives to undertake the time-consuming and costly process of clearing the lower 280 megahertz of the C-band within 36 months. The clearing process will involve a painstakingly choreographed set of precise steps, including procuring, building, and launching new satellites, installing thousands of new antenna filters, and consolidating telemetry,

³ See Press Release, C-Band Alliance, C-Band Alliance Responds to Remarks of FCC Chairman Ajit Pai in C-Band Proceeding (Feb. 6, 2019) (Attachment A); see also Remarks of FCC Chairman Ajit Pai at the Information Technology and Innovation Foundation (Feb. 6, 2020), <https://docs.fcc.gov/public/attachments/DOC-362334A1.pdf>.

⁴ See Intelsat Ex Parte at 5-6.

⁵ *Id.* at 7-8.

tracking, and control (“TT&C”) and gateway sites—the plans for which the CBA has developed.⁶ That is why the distribution of incentive payments among the satellite operators themselves should, as the Commission concludes, reflect “the contribution that each eligible space station operator makes towards transitioning the 3.7-3.98 GHz band to flexible use.”⁷ Under the Commission’s draft payment schedule, SES would be entitled to approximately 41% of the accelerated relocation payments, in contrast to approximately 50% for Intelsat.⁸

Although SES is fully supportive of Chairman Pai’s objectives as set forth in the Draft *Report and Order*, **undisputed facts conclusively show that Intelsat and SES deserve equal shares of any accelerated relocation payments.** As part of the CBA, the four founding members (Intelsat, SES, Telesat, and Eutelsat) agreed to an orderly and independent process to account for their respective financial shares and clearing burdens. In 2019, they jointly commissioned a report from the global accounting firm RSM US LLP (“RSM”) to determine, based on the operators’ 2017 C-band revenue and their agreement regarding their respective clearing contributions, how much each operator should receive from a C-band auction.⁹ Intelsat now seeks to convince the Commission that the operators’ respective contributions are something other than what it agreed to and what RSM determined. In order to respond to Intelsat’s breach of contractual commitments underlying the CBA, and given the specific request from the Commission for this RSM report, SES is providing the report, attached to this letter, under the terms of the Protective Order in this proceeding, and at the request of Commission staff.¹⁰ The RSM report is credible and trustworthy for the following reasons:

- ***The RSM report is objective.*** It was conducted by a neutral third-party that was not beholden to, or acting at the behest of, any particular satellite operator.
- ***The RSM report has been ratified.*** All of the original CBA members—including Intelsat—agreed to hire RSM and agreed to RSM’s accounting methodology in preparing its conclusions. None of the CBA members can credibly dispute RSM’s findings.

⁶ See, e.g., Letter from Bill Tolpegin, Chief Executive Officer, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 5 (filed Jan. 14, 2020).

⁷ Draft *Report and Order* ¶ 218.

⁸ *Id.* ¶ 219.

⁹ See Independent Accountant’s Report of RSM US LLC (Aug. 16, 2019) (“RSM report”) (Attachment B). SES is filing a redacted version of the RSM report in ECFS.

¹⁰ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band et al.*, Protective Order, 34 FCC Rcd 7700 (2019).



- ***The RSM report is accurate.*** RSM applied the rigors of the attestation standards developed by the American Institute for Certified Public Accountants. Furthermore, RSM validated its findings by sampling 20 random transactions from each operator to confirm whether the operators properly accounted for their 2017 C-band downlink revenues.
- ***The RSM report is comprehensive.*** Instead of relying on individual operators who might cherry-pick self-serving revenue data, RSM required each operator to provide documentation of customer contracts with technical specifications; master service contracts with technical specifications; link and budget records; verifiable downlink sites/terminals within CONUS and the rest of the world; carrier records; and more.

The RSM report is crystal clear evidence of what Intelsat, SES, and the other CBA members agreed their respective clearing contributions would be, and it is certainly the best evidence in the record of those respective contributions. Nevertheless, Intelsat now disregards the RSM report and its prior commitments, and instead claims for the first time that it should be “apportioned between 60% and 67% of all acceleration payments.”¹¹

The RSM report is definitive on this issue and sufficient on its face. But if the Commission were to look beyond the RSM report, other key indicators demonstrate why SES will have a “proportionately larger effect on the success of the transition process” relative to the other eligible space station operators.¹² These metrics, which demonstrate that SES should receive approximately half of the accelerated relocation payments, defeat Intelsat’s attempt to obtain two-thirds of the accelerated relocation payments. The metrics that reflect the efforts to clear the lower 300 MHz of C-band include:

- ***Number of satellites to be ordered:*** Under the joint CBA clearing plan, Intelsat and SES combined would require as many as 10 satellites.¹³ In the event it becomes necessary for SES to clear on its own, SES would need six satellites, comparable to the six to seven satellites Intelsat would need to clear on its own.
- ***Number of feeds to be equipped with filters:*** Intelsat estimates that it will be responsible to transition 68% of all C-band CONUS antennas.¹⁴ Intelsat’s estimation is based on a statistically significant sample of 24,372 antennas. As it turns out, SES employees seconded

¹¹ Intelsat Ex Parte at 2.

¹² Draft *Report and Order* ¶ 218.

¹³ Letter from Jennifer D. Hindin, Counsel for the C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at Attachment A (filed Jan. 27, 2020).

¹⁴ Intelsat Ex Parte at 2.



to the CBA were actually responsible for the development, maintenance and use of the tool referenced by Intelsat in Appendix A of its filing. SES, as a member of the CBA, developed the dataset and a CBA-proprietary methodology for determining on a segment-by-segment basis the number of antennas / feeds pointing to each satellite operator.¹⁵ Based on this detailed analysis, CBA filed on February 4th 2020 the assessment that approximately 99% of earth station C-band feeds in CONUS point to a CBA-member satellite. SES has applied the very same methodology to SES and Intelsat satellites. On that basis, SES expects to have to retrofit approximately 48% of all C-band feeds, compared to 50% for Intelsat, and the remaining 2% reflecting the combination of Telesat, Eutelsat, and Star One.¹⁶

- ***Number of antennas to be installed:*** SES projects that, of all the antennas that need to be installed at customers' or MVPDs' premises as part of the clearing process, SES will be responsible for approximately 50% and Intelsat will be responsible for the other approximately 50%.
- ***Number of decommissioned TT&C/gateway sites:*** SES will be required to decommission six TT&C/gateway sites, and Intelsat will be required to decommission six TT&C/gateway sites.

In short, if “the contribution that each eligible space station operator makes” represents the lodestar for distributing accelerated relocation payments among eligible satellite operators, then SES is entitled to more than the amount set forth in the draft *Report and Order*. The RSM report attached to this letter provides indisputable evidence and was commissioned, reviewed, and approved by executed signature pages from each of the CBA members. Intelsat’s evidence, meanwhile, is wholly unreliable. While some may believe it is necessary to take proposed payments from SES in order to placate disgruntled, financially-troubled companies, Chairman Pai

¹⁵ See Letter from Bill Tolpegin, Chief Executive Officer, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Feb. 4, 2020).

¹⁶ To inflate its share and escape the evidence that Intelsat and SES are equal partners, Intelsat overlays a new assumption—namely, that Intelsat “will be responsible for clearing a percentage of antennas roughly equal to Intelsat’s market share in each respective category.” Intelsat Ex Parte at Ex. A. Intelsat makes no attempt to justify this assumption or explain why it better captures clearing efforts than the actual number of earth station antennas each company is responsible for clearing. Nor does Intelsat explain what is meant by “market share,” let alone explain how these “market share” inputs are sourced.



has unequivocally made clear that “the balance sheets of private companies are not [his] concern.”¹⁷ Chairman Pai’s statement remains just as true today as it was then.

SES applauds the Commission for its leadership, generally supports the draft *Report and Order*, and looks forward to working cooperatively with the Commission and other stakeholders to ensure the expeditious availability of a portion of the C-band for terrestrial 5G services. Please contact me with any questions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'John Purvis'.

John Purvis
Chief Legal Officer
SES Americom, Inc.

CC: Matthew Pearl

Enclosures

¹⁷ Remarks of FCC Chairman Ajit Pai at the Information Technology and Innovation Foundation, Washington, D.C. (Feb. 6, 2020), *available at* <https://docs.fcc.gov/public/attachments/DOC-362334A1.pdf>.

REDACTED - FOR PUBLIC INSPECTION

ATTACHMENT A

C-Band Press Release



C-Band Alliance Responds to Remarks of FCC Chairman Ajit Pai in C-Band Proceeding

Washington, D.C. – February 6, 2019 – The C-Band Alliance (“CBA”), comprised of the leading global satellite operators Intelsat (NYSE: I), SES (Euronext Paris: SESG), and Telesat, today responded to remarks delivered by Federal Communications Commission (“FCC”) Chairman Ajit Pai at an industry event hosted by the Information Technology and Innovation Foundation in Washington, D.C.

The Chairman’s commentary previewed the key elements of a highly anticipated draft order in response to the proceeding to bring C-band spectrum to the market, upon which the CBA was premised and has been an active participant since 2018. Once issued, the draft order is expected to detail the FCC’s approach to clearing C-band spectrum to enable rapid and nationwide 5G network deployment in the U.S.

Chairman Pai has indicated that the order as written by the Commission is expected to achieve the Commission’s core objectives of the C-band clearing proceeding—namely a robust amount of spectrum cleared to enable 5G, a rapid clearing process, revenues that will benefit the American public, and protection of incumbent C-band services. He indicated that with the anticipated February 7, 2020 release of a draft order, the FCC will pursue a 2020 public auction of the C-band spectrum.

In a statement, the CBA said, “The imminent issuance of the draft order reflects the tireless efforts of many over the past several years to ensure that this critical spectrum comes to market safely, quickly, and efficiently. Today’s comments by Chairman Pai are a significant development in this important proceeding. We look forward to reviewing the draft order, once issued, to place Chairman Pai’s comments in full context.”

Markus Payer
C-Band Alliance
Communications
+1 202 450 0004 (m)
markus.payer@c-bandalliance.com

Richard Whiteing
SES
Investor Relations
+352 710 725 261 (o)
+352 691 898 956 (m)
richard.whiteing@ses.com

Dianne VanBeber
C-Band Alliance
Communications

Intelsat
Vice President Investor Relations
+1 703 559 7406 (o)
+1 703 627 5100 (m)
Dianne.VanBeber@intelsat.com

Lynette Simmons
Telesat
Director, Marketing & Communications
+1 613 748 8729
LSimmons@telesat.com

ATTACHMENT B

The RSM report

[REDACTED – FOR PUBLIC INSPECTION]