

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Notification of Non-Routine Transmission Levels)	IB Docket No. 12-267
Pursuant to Section 25.140(d) of the Commission's Rules)	

COMMENTS OF SES AMERICOM, INC.

SES Americom, Inc. (“SES”) hereby comments on the Petition for Clarification or Declaratory Ruling filed by Eutelsat S.A. (“Eutelsat”) in the above-captioned proceeding.¹ The Eutelsat Petition asks the International Bureau to provide guidance on the proper scope and effectiveness of notifications submitted pursuant to Section 25.140(d) of the Commission’s rules, which specifies that a satellite operator “may notify the Commission of its non-routine transmission levels and be relieved of the obligation to coordinate such levels with later applicants and petitioners.”²

As discussed herein, SES disagrees with Eutelsat’s argument that Section 25.140(d) notifications should be valid only if they describe current operations at previously authorized power levels³ because such an interpretation would unduly narrow the scope of the rule and prevent it from achieving its intended effect. However, SES concurs with Eutelsat that if a notification contains “inaccurate information” – specifically, if it does not reflect levels that have been agreed to with operators of satellites within six degrees – it “must be disregarded for

¹ Petition for Clarification or Declaratory Ruling of Eutelsat S.A., IB Docket No. 12-267, filed Aug. 27, 2018 (the “Eutelsat Petition”).

² See 47 C.F.R. § 25.140(d).

³ Eutelsat Petition at 1.

purposes of Section 25.140(d), and thus cannot enable higher-power operations or constrain the operation of a satellite operating at routine power levels.”⁴

BACKGROUND

As Eutelsat explains, the issues it raises regarding Section 25.140 relate to a recent application proceeding in which Eutelsat sought authority to allow the French-licensed EUTELSAT 133WA satellite to serve the U.S. market in Ku-band frequencies at 132.85° W.L. +/- 0.1 degrees. SES commented on that request, arguing in part that Eutelsat’s adjacent satellite compatibility analysis was flawed because it did not account for the non-routine power levels SES had notified for the C/Ku-band AMC-4 satellite located at 134.9° W.L.⁵ That notification specified uplink power levels of -42 dBW/Hz in the 13.75-14.5 GHz frequencies used by both AMC-4 and EUTELSAT 133WA.⁶

In its response, Eutelsat challenged whether the SES Section 25.140(d) Notification was valid, arguing that the power levels specified in the notification exceeded those authorized for AMC-4 or any earth station communicating with the satellite.⁷ Eutelsat claimed that Section 25.140 was intended to allow satellite operators to notify non-routine power levels only if those levels were in active use.⁸ The Eutelsat Petition reiterates those arguments here.

⁴ *Id.*

⁵ See Comments of SES Americom, Inc., File No. SAT-PPL-20180302-00018, May 7, 2018.

⁶ Letter from Petra A. Vorwig, SES Senior Legal & Regulatory Counsel, to Marlene H. Dortch, Secretary, Federal Communications Commission, File Nos. SAT-MOD-20170518-00073 *et al.*, dated Jan. 10, 2018 (the “SES Section 25.140(d) Notification”). The letter also specified a non-routine power level of -19 dBW/Hz for AMC-4 in the 11.45-12.2 GHz downlink band, a portion of which, 11.45-11.7 GHz, overlaps with the frequencies used by EUTELSAT 133WA.

⁷ Opposition and Response of Eutelsat S.A., File No. SAT-PPL-20180302-00018, May 17, 2018 (the “Eutelsat Response”) at 11-17.

⁸ *Id.*

Eutelsat’s account of the prior history stops at this point, however, and the Eutelsat Petition does not even mention, much less respond to, the points SES made in its detailed rebuttal to the Eutelsat contentions regarding Section 25.140.⁹ For the reasons set forth in the SES Reply, and as elaborated below, the Commission should reject Eutelsat’s attempt to unduly narrow the scope of the flexibility bestowed by Section 25.140. Instead, the Commission should take a practical approach to the rule, and allow satellite operators the latitude to submit notifications describing the non-routine power levels permitted under their existing coordination agreements with adjacent satellites, regardless of whether those power levels are in use at the time. Any notification that accurately reflects such agreements should be given effect, freeing the notifying operator from the obligation to coordinate with later-filed satellites and requiring such later-filed satellites to accept interference caused by operations up to the notified levels, as specified in Section 25.140(d)(3).

DISCUSSION

As a threshold matter, Eutelsat’s claim that AMC-4 operations at uplink levels exceeding -44 dBW/Hz would conflict with the satellite license¹⁰ cannot be squared with the terms and conditions of that license. Although SES referenced -44 dBW/Hz as the maximum intended uplink power level when it applied to relocate AMC-4 to 130.9° W.L.,¹¹ the AMC-4 License does not impose any uplink power limit on AMC-4, specifying only that the satellite’s operations must “comport with the maximum power limits indicated in existing or future coordination

⁹ See Reply of SES Americom, Inc., File No. SAT-PPL-20180302-00018, June 4, 2018 (“SES Reply”).

¹⁰ Eutelsat Petition at 7.

¹¹ *SES Americom, Inc.*, Call Sign S2135, File No. SAT-MOD-20170518-00073 (the “AMC-4 Modification”), Technical Appendix at 4, granted July 31, 2017 (the “AMC-4 License”).

agreements at 134.9° W.L.”¹² The coordinated power levels set forth in the SES Section 25.140(d) Notification superseded those described in the AMC-4 Modification, and accordingly, operation at or up to the level of -42 dBW/Hz identified in the SES Section 25.140(d) Notification is fully consistent with the AMC-4 License.

Eutelsat’s broader assertion that Section 25.140(d) allows satellite operators to submit notifications only if earth stations are actively communicating with the relevant satellite using non-routine power levels¹³ also must be rejected. As SES previously explained, Eutelsat’s proposed interpretation would create a “chicken and egg dilemma” for satellite operators that would undermine the purpose of Section 25.140(d) – to provide certainty to satellite operators seeking to meet customer demand to operate at above-routine power levels that have been coordinated with adjacent satellites.¹⁴

Specifically, SES explained in June that it had:

taken a conservative approach to implementing the relatively new Section 25.140(d) provisions, given that there is little or no precedent applying the rule and based on SES’s desire to avoid situations in which an existing customer service would have to be altered to accommodate a new satellite arrival. In the case of AMC-4, SES was asked by a customer some time ago for flexibility to operate at above-routine power levels. Prior to agreeing to such higher levels, SES first took steps to prepare and submit the SES Section 25.140(d) Notification in order to solidify its operating rights. Having completed the notification step, SES has been in negotiations with the customer regarding the details of implementing higher power levels on the customer’s system.¹⁵

¹² AMC-4 License, Attachment to Grant at 2, ¶ 7.

¹³ Eutelsat Petition at 4-5.

¹⁴ SES Reply at 3.

¹⁵ *Id.* at 4.

SES subsequently reached an agreement with its customer regarding proposed operations at non-routine levels and understands that its customer is preparing to seek any necessary modification of its earth station authorization to accommodate those operations.

Under the view of Section 25.140(d) put forth by Eutelsat, these careful efforts would be for naught, creating “the risk that customer operations at non-routine power levels, once begun, would later have to be dialed back because of a newly arrived adjacent satellite – exactly the type of situation Section 25.140(d) was intended to avoid.”¹⁶ Eutelsat’s theory would require a series of steps to occur before any satellite operator would be eligible to file a Section 25.140(d) notification, including completion of negotiations for higher level operations with a prospective customer, filing and grant of any applications necessary to modify the underlying space and earth station authorizations, completion of any technical or other measures needed to prepare for the new operating parameters, and actual commencement of the higher power transmissions.¹⁷ Until all these prerequisites occurred and the notification was filed, the right to operate at the higher levels would not be protected vis-à-vis a new applicant filing for an adjacent satellite location.¹⁸

As SES has previously emphasized, this interpretation of Section 25.140(d):

would put both satellite operators and their customers in an untenable position, as neither would be sure until after operations at above-routine power levels were already under way whether the rights for continuing operations at those levels had been effectively secured or whether the submission of an intervening satellite application or petition would require the operations to be limited to

¹⁶ *Id.*

¹⁷ *Id.* at 4-5.

¹⁸ See 47 C.F.R. § 25.140(d)(3) (“Non-routine transmissions notified pursuant to this paragraph (d) need not be coordinated with operators of authorized co-frequency space stations *that filed their complete applications or petitions after the date of filing of the notification* with the Commission. Such *later applicants and petitioners* must accept any additional interference caused by the notified non-routine transmissions.”) (emphasis added).

routine Section 25.140 levels. Such an outcome would nullify the intended effect of Section 25.140(d) by making it impossible for a satellite operator to negotiate the ability to offer higher power to customers and provide certainty that the customers would not later be forced to cut back their power.¹⁹

The Eutelsat Petition makes no attempt to address these concerns and identifies no countervailing public policy interests that could justify the harms to satellite customer interests stemming from Eutelsat's proposed restrictive interpretation of Section 25.140(d). The practical approach advocated by SES still ensures that prospective satellite applicants have notice of the operating environment in advance of requesting satellite authority at a given orbital location. In the specific case involving AMC-4, the non-routine operating levels notified by SES were a matter of public record when the SES Section 25.140(d) Notification was filed, almost two months before Eutelsat sought to move its satellite to an adjacent location, and Eutelsat has expressly advised the Commission that it could adjust the operations of EUTELSAT 133WA as needed to accommodate communications with AMC-4 that exceed routine levels.²⁰

Moreover, contrary to Eutelsat's assertion, allowing satellite operators to notify non-routine power levels in advance of implementing operations at such levels would not contravene the Communications Act or the satellite and earth station licensing rules.²¹ SES is not suggesting that a Section 25.140(d) notification is all that is required to permit the commencement of operations at power levels that exceed the default levels for two-degree spacing, only that such a notification establishes the basis for satellite and earth station operators to seek appropriate authority for non-routine operations.

¹⁹ SES Reply at 5.

²⁰ Eutelsat Response at 17.

²¹ Eutelsat Petition at 4-5.

Accordingly, consistent with the policy underlying Section 25.140(d) in favor of protecting satellite customers' interests in service continuity, the Commission should confirm that satellite operators can notify non-routine power levels in order to establish regulatory rights to use above-routine power levels prior to actually commencing such higher power operations. Provided that the notification correctly represents that the specified levels have been coordinated with operators of adjacent satellites within six degrees, the notification should be deemed effective, entitling the notifying party to the flexibility and protections specified in Section 25.140(d)(3).

SES emphasizes, however, that the Commission should not give effect under Section 25.140(d) to notifications of non-routine power levels that do not accurately reflect the power levels that have been coordinated with adjacent satellites. For example, SES has objected to notification letters filed by Intelsat for the Galaxy 16 and Galaxy 28 satellites, noting that the levels specified for those satellites had not been successfully coordinated with SES, which operates SES-1 two degrees away from Galaxy 16 and SES-2 two degrees away from

Galaxy 28.²² In any action in response to the Eutelsat Petition, the Commission should also address SES's outstanding objection to these Intelsat notification letters.

Respectfully submitted,

SES AMERICOM, INC.

Of Counsel

Karis A. Hastings
SatCom Law LLC
1317 F Street, N.W., Suite 400
Washington, D.C. 20004

By: /s/ Petra A. Vorwig
Senior Legal and Regulatory Counsel
SES Americom, Inc.
1129 20th Street N.W., Suite 1000
Washington, D.C. 20036

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²² See Letter of Karis A. Hastings, Counsel for SES Americom, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, File Nos. SAT-RPL-20051118-00233 and SAT-MOD-20050422-00089, dated Mar. 22, 2017.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2018, I caused a true and correct copy of the foregoing “Comments of SES Americom, Inc.” to be sent by first class mail, postage prepaid, to the following:

Carlos M. Nalda
LMI Advisors, LLC
2550 M Street, N.W., Suite 345
Washington, D.C. 20037

Susan H. Crandall
Associate General Counsel
Intelsat US LLC
7900 Tysons One Place
McLean, VA 22102

/s/ Roxana Hernandez
Roxana Hernandez