

In the Matter of )  
 )  
Further Streamlining ) IB Docket No. 18-314  
Part 25 Rules Governing Satellite Services )

Eutelsat S.A. (“Eutelsat”) submits these Reply Comments on the above-captioned Federal Communications Commission’s Notice of Proposed Rulemaking (“NPRM”) seeking to simplify the Commission’s Part 25 Rules governing satellite services.<sup>1</sup> Eutelsat welcomes the Commission’s efforts to further streamline its Part 25 Rules and the opportunity to provide its further input in this proceeding.<sup>2</sup>

- (i) the Commission’s Unified License proposal implicates issues raised in a separate proceeding addressing Section 25.140(d), and the Commission should carefully consider the effects of non-routine operations on subsequent applicants and licensees;
- (ii) the Commission should adopt safeguards to prevent warehousing or preclusion of earth station operations by Unified Licensees in bands with earth station deployment limits;
- (iii) the current Commission practice of seeking additional information in appropriate circumstances to facilitate acceptance for filing and public notice of satellite applications has generally worked well, and automatic public notice of satellite applications may undermine the “substantially complete” standard and Commission decision making;

<sup>2</sup> See generally these Reply Comments and Comments of Eutelsat S.A., IB Docket No. 18-314, (filed March 18, 2019) (“Eutelsat Comments”).

- (iv) adoption of a 0.1° satellite station-keeping tolerance would streamline processing of space station applications, earth station applications, and market access petitions by avoiding waivers and modifications associated with using this well-accepted standard, and would result in other public benefits;
- (v) there is no basis in this proceeding to consider, much less impose, application of regulatory fees on non-U.S.-licensed satellite operators seeking access to the U.S. market; and
- (vi) eliminating annual reporting requirements for satellite operators is well-supported by the record, and collecting, maintaining, and making available relevant contact information will assist operators in resolving interference issues.

## **I. DISCUSSION**

Eutelsat appreciates this opportunity to provide additional input in this proceeding in these Reply Comments. The Commission has an opportunity to further streamline its licensing rules in a number of ways, should consider the impact of the Unified License proposal on other licensing policies, and should only adopt changes that result in application processing and procedural benefits.

### **A. The Commission Should Consider the Impact of a Unified License on Section 25.140(d)**

In August 2018, Eutelsat filed a petition for clarification or declaratory ruling requesting the Commission provide guidance on the application of Section 25.140(d) with respect to non-routine, higher-power space station and earth station operations.<sup>3</sup> Eutelsat sought to confirm that such operations must actually be implemented to overcome the rights of subsequent licensees to operate at routine two-degree spacing levels.<sup>4</sup> The Commission placed the Section 25.140(d) Petition on public notice for comment and the proceeding remains pending.<sup>5</sup>

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<sup>3</sup> See Petition for Clarification or Declaratory Ruling of Eutelsat S.A., IB Docket No. 12-267 (filed Aug. 27, 2018) (“25.140(d) Petition”).

<sup>4</sup> See generally *id.*

<sup>5</sup> Given the pendency of the proceeding, Eutelsat will separately file these Reply Comments as a written *ex parte* in IB Docket 12-267.

As Eutelsat has indicated, preservation of authorized non-routine operations under Section 25.140(d) would appear warranted only after commencement of those operations given the Commission's intent to adopt a limited exception to its two-degree spacing policies.<sup>6</sup> However, if the Section 25.140(d) process is linked to grant of operating authority, the proposed Unified License complicates matters given the long delay between grant and actual implementation of non-routine operations. In such circumstances, balancing the Commission's two-degree spacing policy with the potential for future non-routine operations is considerably more difficult.

While the touchstone for preserving non-routine, higher-power operations could potentially be Commission grant of operating authority, such an approach would be reasonable only where earth station operations must be implemented within a limited period after grant and where authority would be terminated if operations are discontinued. Commission rules and policies do not appear to adequately address these issues in the Section 25.140(d) context,<sup>7</sup> and the potential implications of the proposed Unified License also should be considered.

**B. The Commission Should Adopt Safeguards To Prevent Anticompetitive Behavior in Connection with Its Unified License Proposal**

Intelsat suggests the Commission should address the increased potential for warehousing created by the Unified License proposal.<sup>8</sup> These concerns are particularly acute in bands with earth station deployment limits such as the 27.5-28.35 GHz, 37.5-40 GHz, and 47.2-48.2 GHz

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<sup>6</sup> See generally 25.140(d) Petition.

<sup>7</sup> See 47 C.F.R. §25.133 (providing licensee and registrants six or twelve months for earth station construction/operation); see also 47 C.F.R. §25.161(c) (providing for automatic termination of all or part of an earth station license where the removal or modification of the facilities which renders the station not operational for more than 90 days, unless specific authority is requested).

<sup>8</sup> See Comments of Intelsat License LLC, IB Docket No. 18-314 (filed March 18, 2019) ("Intelsat Comments") at 3.

bands.<sup>9</sup> The Commission should adopt safeguards to deter warehousing in connection with individually licensed earth stations authorized under Unified Licensees in these bands.

Intelsat proposed that the Commission either (i) extend the existing space station bond to include unified licensing earth station buildout; or (ii) impose a separate escalating bond requirement for earth stations associated with a Unified License similar to the escalating bond requirement for satellite systems.<sup>10</sup> However, Eutelsat is concerned about how such a bond requirement could be appropriately structured and applied.

Complex earth station bond issues to be resolved include (i) an appropriate bond amount; (ii) how a bond would escalate based on time between approval date and expected implementation date; (iii) whether the bond amount should vary based on the number of earth stations proposed by a single applicant or the number of earth stations proposed in a single county; (iv) whether a bond must be posted for an earth station approved within one year of the planned launch of an associated space station; (v) whether changing an earth station location would trigger enforcement of a bond; etc. If the Commission considers adopting an escalating earth station performance bond approach, it should ensure that the foregoing issues are addressed, that bond obligations are triggered only upon approval of an individually authorized earth station in the subject bands, and that the initial bond amount and escalation provisions are sufficient to deter warehousing while not negatively impacting commercial development.

Another option would be to limit earth station implementation timeframes in these bands, even under a Unified License, to the traditional one-year period. In other words, earth stations that would operate in the 27.5-28.35 GHz, 37.5-40 GHz, and 47.2-48.2 GHz bands must be constructed and commence operation within one year of Commission approval of the earth

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<sup>9</sup> Intelsat Comments at 4.

<sup>10</sup> Intelsat Comments at 4-5.

station submission, including the precise location of the earth station.<sup>11</sup> This approach would discourage warehousing/freeze-out filings by limiting build-out periods, would avoid disadvantaging teleport operators that must obtain authority via independent earth station licenses, and would incentivize more rapid earth station implementation and spectrum use in the subject bands consistent with existing Commission policies.

### **C. The Commission Should Maintain Its Current Practices with Respect to Space Station Application Processing**

Eutelsat supports the current practice permitting space station applicants to clarify or supplement their applications in response to a Commission inquiry and otherwise correct minor errors or omissions that do not fundamentally affect the nature of the proposal.<sup>12</sup> This practice is contemplated by the rules<sup>13</sup> and helps prevent applications from being dismissed unnecessarily for minor mistakes.

Eutelsat is sympathetic to the desire to accelerate space station application processing and is also cognizant of the constraints imposed by the Commission's processing rules, the increased volume of satellite applications, and practical limits on administrative resources. In our view, however, adopting unnecessary additional procedures could do more harm than good and limit the Commission's administrative discretion, particularly if coupled with the associated automatic public notice proposal.<sup>14</sup> Other commenters are in accord.<sup>15</sup>

Eutelsat believes the Commission staff should maintain the ability to evaluate each space station application under Section 25.112 and take appropriate action based on the application's

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<sup>11</sup> See NPRM at ¶13.

<sup>12</sup> See NPRM at ¶¶20-21.

<sup>13</sup> See 47 C.F.R. §25.112(c).

<sup>14</sup> See NPRM at ¶20.

<sup>15</sup> See Intelsat Comments at 6-7; *see also* Comments of SES Americom, Inc. and O3B Limited, IB Docket No. 18-314 (filed March 18, 2019) ("SES Comments") at 6-8.

initial sufficiency. Establishing automatic public notice requirements and affirmative outreach processes would unnecessarily burden the staff, would constrain administrative decision making, and could lead to a greater, not fewer, number of application dismissals.

Although establishing a target timeframe to accept for filing, dismiss, or seek additional information may be useful – and even adopting an informal timeline for consideration of space station applications (with temporary suspension provisions) could assist in setting expectations and guiding the process<sup>16</sup> – each application is unique and may involve complex legal, policy, and technical issues that require additional examination. Thus, it does not appear possible to adopt a “one size fits all” approach to facilitate more expeditious application processing.

#### **D. Adopting a 0.1° Satellite Station-keeping Standard Would Streamline Space Station Applications and Result in Other Public Benefits**

Intelsat proposes that the Commission revise Section 25.210(j) of the Rules to permit GSO satellite operators to maintain their licensed satellites within 0.1° of their assigned orbital longitude, consistent with the ITU’s station-keeping requirements.<sup>17</sup> Because the ITU standard is internationally accepted and commonplace, the Commission has routinely granted waivers to permit 0.1° station-keeping<sup>18</sup> and adoption of this proposal will result in fewer waiver requests and therefore streamline application processing.

Adoption of the proposed station-keeping standard also will result in other significant public benefits, including reducing the burden of on-orbit maneuvering and facilitating satellite colocation. Because adopting an 0.1° station-keeping standard will have both procedural and

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<sup>16</sup> See, e.g., <https://www.fcc.gov/general/informal-timeline-consideration-applications-transfers-or-assignments-licenses-or>.

<sup>17</sup> Intelsat Comments at 9.

<sup>18</sup> See, e.g., ES 172 LLC, File No. SAT-RPL-20170927-00136, Call Sign S3021 (rel. Sept. 5, 2018) (narrative application citing SES Americom, Inc., Application for Modification of Satcom SN-4 Fixed Satellite Space Station License, 20 FCC Rcd 11542, 11545 (Sat. Div. 2005) and <https://www.fcc.gov/isat-list> (updated May 14, 2015, noting multiple waivers for Inmarsat 3F and 4F satellites)).

substantive benefits for the Commission and satellite operators, Eutelsat supports its adoption in the context of this proceeding.

**E. The Commission Should Not Impose Application or Regulatory Fees on Foreign-Licensed Satellite Operators**

Eutelsat opposes Intelsat's assertion that "[l]icensing and regulatory fees should apply not only to U.S. licensees, but also non-U.S.-licensed satellite operators that have been granted market access....[because] the discrepancy in the cost of operating in the U.S. gives foreign-licensed operators a competitive advantage over their U.S.-licensed competitors."<sup>19</sup> Although arguably related to potential fees for a Unified License, Intelsat's broadly worded suggestion goes well beyond the scope of this proceeding<sup>20</sup> and the substance of its proposal has been repeatedly rejected by the Commission given the practical and statutory limitations prohibiting imposition of licensing and regulatory fees on foreign-licensed satellite operators.<sup>21</sup>

Eutelsat acknowledges, however, that Unified License authority that might be available to a non-U.S.-licensed satellite operator would have both a space station and an earth station component. Although the space station component cannot be considered a satellite license subject to application and regulatory fees, the earth station component would appear to be an

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<sup>19</sup> Intelsat Comments at 6.

<sup>20</sup> For example, Intelsat cites filings made in more appropriate Managing Director proceedings addressing the assessment and collection of regulatory fees. *See* Intelsat Comments at n. 17 (citing Comments on Intelsat License LLC, MD Docket Nos. 15-121 and 14-92, at 3-4 (June 22, 2015); Comments of Intelsat License LLC, MD Docket Nos. 12-201, 13-140, and 14- 92, at 1-10 (July 7, 2014); Reply Comments of Intelsat License LLC, MD Docket Nos. 12-201, 13-140, and 14-92, at 1-8 (July 21, 2014)).

<sup>21</sup> Non-U.S.-licensed satellite operators do not apply for a Title III space station license so no license application fee should be imposed, and there may be significant adverse international effects and questions regarding consistency with national treatment principles if the Commission sought to impose other market access-related fees. Further, regulatory fees are not assessed for non-U.S.-licensed space stations that have been granted U.S. market access. The Commission has observed that that the legislative history provides that only space stations licensed under Title III – which does not include non-U.S.-licensed satellite operators – may be subject to regulatory fees. *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, 14 FCC Rcd 9896, 9882, ¶ 39 (1999).

exercise of Commission licensing authority under Title III of the Communications Act.

Accordingly, Eutelsat believes that a non-U.S.-licensed satellite operator seeking to obtain Unified License authority would be responsible for the incremental application and annual regulatory fees associated with the earth station component of the authorization.<sup>22</sup>

**F. The Commission Should Eliminate Annual Report Requirements, Maintain Current Satellite Operator Contact Information, and Make Such Information Available to Satellite Operators**

The proposal to eliminate annual reporting requirements for satellite operators received broad support.<sup>23</sup> In addition, commenters supported the Commission's proposal to maintain current satellite operator contact information, although there was a difference in opinion with respect to the basis and method for maintaining such information.<sup>24</sup>

Commission collection and maintenance of such contact information provides an opportunity to ensure that all satellite operators serving the U.S. market are also aware of current points of contact for operational inquiries and interference resolution. Appropriate dissemination of new and updated satellite operator contact information will facilitate operator-to-operator discussions and provide a means for regularly updating contact information.

One possible vehicle to distribute such information is the Approved Space Station List.<sup>25</sup> The Commission includes detailed and extremely helpful information regarding the operations of approved satellites in this document and could include satellite operator point of contact

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<sup>22</sup> The incremental fees associated with the earth station component of a Unified License would be the difference between the Unified License application and regulatory fees, and the relevant satellite application and regulatory fees, respectively.

<sup>23</sup> See, e.g., SES Comments at 5; Intelsat Comments at 2; Comments of Iridium Communications Inc., IB Docket No. 18-314 (filed March 18, 2019) ("Iridium Comments") at 3.

<sup>24</sup> Compare Eutelsat Comments at p. 3 with Iridium Comments at 3-4 and Comments of Viasat, Inc., IB Docket No. 18-314 (filed March 18, 2019) at 9.

<sup>25</sup> See <https://www.fcc.gov/approved-space-station-list>.



information as well. Other appropriate administrative vehicles also may be available to collect and maintain such information. Eutelsat urges the Commission to make satellite operator contact information available to all satellite operators to ensure that they may review, update, and utilize the most current contact information available.

## **II. CONCLUSION**

For the foregoing reasons, Eutelsat generally supports the Commission's proposals to further streamline its Part 25 application processing rules and adopt a new Unified License regime that will afford additional flexibility and certainty in implementing satellite systems and services. Eutelsat urges the Commission to take action consistent with Eutelsat's Comments and Reply Comments submitted in this proceeding.

Respectfully submitted,

**EUTELSAT S.A.**

Fabrice Barbedette  
Director of Regulatory Market Access  
Eutelsat S.A.  
70, rue Balard  
F-75502 Paris Cedex 15  
France

Carlos M. Nalda  
LMI Advisors, LLC  
2550 M Street, NW, Suite 300  
Washington, D.C. 20037

*On behalf of Eutelsat S.A.*

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