

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

In the Matter of)	
)	
Amendment of the Commission's Policies and)	IB Docket No. 06-160
Rules for Processing Applications in the)	
Direct Broadcast Satellite Service)	
)	

REPLY COMMENTS OF AT&T SERVICES, INC.

AT&T Services, Inc. ("AT&T"), on behalf of DIRECTV Enterprises LLC ("DIRECTV") and its other affiliates, hereby submits these reply comments on the *Second Notice of Proposed Rulemaking* ("*Second NPRM*") in the above-referenced proceeding, in which the Federal Communications Commission ("FCC" or "Commission") seeks comment on proposals to revise its rules governing direct broadcast satellite ("DBS") services.¹

As AT&T established in its opening comments, the market for DBS services is large and significant, serving nearly 30 million households and acting as a driving force for competition and innovation in the broader market for multichannel video programming distribution ("MVPD") services.² To help the Commission meet its objectives of modernizing DBS rules while adequately protecting these existing services, AT&T advocated for two proposals in its opening comments: (i) extending the license term for non-broadcast DBS satellites to 15 years; and (ii) in the event the Commission moves forward with lifting the DBS licensing freeze,

¹ *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, Second Notice of Proposed Rulemaking, IB Docket No. 06-160, FCC 18-157 (2018) ("Second NPRM").*

² *See Comments of AT&T Services, Inc., IB Docket No. 06-160, at 2-5 (filed Mar. 25, 2019) ("AT&T Comments").*

requiring applicants for DBS services at reduced orbital spacing (“tweener” applicants) to coordinate with all existing DBS systems within six orbital degrees.³ There is record support for each of these proposals.

In addition, to the extent the Commission lifts the DBS licensing freeze and adopts final rules in this proceeding, the Commission should apply AT&T’s six-degree coordination proposal to new U.S. ITU filings, and should reject a proposal to circumvent the first-come, first-served licensing process for market access applications. Further, the Commission should decline to address aggregate interference in the current proceeding and, in any future proceeding on this issue, should ensure aggregate interference is properly apportioned among services. Finally, the Commission should reject the attempts of some commenters to usurp this proceeding to promote the use of DBS spectrum for other services. The Commission was correct to focus on modernizing DBS rules in light of the tremendous value of DBS services, and should retain that focus in this proceeding. To that end, the Commission also should reject policies that would degrade the value of planned DBS orbital locations.

I. THE RECORD SUPPORTS EXTENDING DBS LICENSE TERMS AND REQUIRING COORDINATION BY TWEENER APPLICANTS.

The Commission should adopt the two primary proposals AT&T put forth in its opening comments, which are well-supported by the record. First, the Commission should extend the license term for non-broadcast DBS space stations from 10 to 15 years. As AT&T expressed in its opening comments,⁴ the *Second NPRM* rightly recognizes that “[t]here are no technical or engineering considerations that render the operating life of a DBS satellite shorter than the operating life of a non-DBS satellite,” and that extending DBS license terms to 15 years would

³ See *id.* at 5-9.

⁴ AT&T Comments at 8-9.

“make DBS space station license terms consistent with the terms of most other space stations[.]”⁵ Multiple commenters support this proposal, including SES, EchoStar, and DISH.⁶ Moreover, no commenter opposes it.

Second, the Commission should require applicants for twener DBS systems to coordinate with all existing DBS applicants within six degrees, rather than relying on ITU coordination triggers to determine whether coordination is required.⁷ EchoStar and DISH agree with AT&T that requiring twener applicants to coordinate with existing operators regardless of ITU criteria would help to ensure “the compatibility of proposed twener systems with incumbent DBS operators.”⁸ Specifically, EchoStar and DISH assert that twener applicants should be required to “conduct a MSPACE interference analysis and obtain the consent of existing DBS operators with satellites located less than nine degrees away in the orbital arc.”⁹ Given the record support for this approach, the FCC should adopt AT&T’s proposal.

In addition to the blanket coordination requirement, AT&T supports EchoStar and DISH’s proposal that twener applicants conduct an MSPACE analysis and confirm the results of that analysis in their applications.¹⁰ MSPACE analyses help to inform coordination discussions and thus are a routine part of the coordination process. Accordingly, MSPACE analyses should be mandated in any FCC rules governing twener applications.

⁵ *Second NPRM* ¶ 19.

⁶ See Comments of SES Americom, Inc. and Its Affiliates., IB Docket No. 06-160, at 2 (filed Mar. 25, 2019) (“SES Comments”); Comments of EchoStar Satellite Operating Corporation and DISH Network, LLC, IB Docket No. 06-160, at 2, 6 (filed Mar. 25, 2019) (“EchoStar and DISH Comments”).

⁷ See AT&T Comments at 5-8.

⁸ EchoStar and DISH Comments at 10.

⁹ *Id.* at 3.

¹⁰ See EchoStar and DISH Comments at 10.

II. THE COMMISSION SHOULD APPLY AT&T'S SIX-DEGREE COORDINATION APPROACH TO THE SUBMISSION OF U.S. ITU FILINGS.

Not only should the Commission apply AT&T's six-degree coordination approach for twener applications for FCC licenses, but it should also do the same for entities seeking new U.S. ITU filings for DBS systems.¹¹ The limitation of ITU criteria animating AT&T's proposal to require coordination by twener applicants applies equally to ITU filings for new twener systems: namely, using only ITU criteria may fail to identify existing DBS systems that could be degraded by a new filing.¹² Further, because, as the Commission recognizes, "the ITU Appendix 30 and 30A ITU rules do not govern the relationship between two DBS systems operating under U.S. filings,"¹³ the FCC is free to use whatever mechanism it feels is appropriate to determine whether a new DBS ITU filing may affect an existing U.S. filing. Because requiring coordination with all U.S. DBS ITU filings covering systems within six degrees would best serve the Commission's goal of ensuring that existing U.S. filings are not "unduly eroded,"¹⁴ AT&T's proposal should be adopted.

III. THE COMMISSION SHOULD DECLINE TO CIRCUMVENT THE FIRST-COME, FIRST-SERVED PROCESS FOR NON-U.S.-LICENSED OPERATORS.

The Commission should reject EchoStar and DISH's proposal that the Commission "revise its current practice of deferring the processing of a request for U.S. market access for a DBS satellite deemed mutually exclusive with a prior U.S. application filing" and instead "act on

¹¹ In addition to proposing to use ITU criteria to determine when a proposed twener system would affect existing operators for purposes of the twener applicant's FCC license application, the *Second NPRM* proposes to require entities seeking new U.S. DBS ITU filings to use ITU criteria to demonstrate that the proposed operations would not affect existing U.S. ITU filings, and to obtain consent from any affected operators. *Second NPRM* ¶ 22.

¹² See AT&T Comments at 6-7.

¹³ *Second NPRM* ¶ 31.

¹⁴ *Id.* ¶ 22.

U.S. market access requests for DBS operations that comply with the Commission’s rules as they are filed, regardless of prior U.S. application filings for similar spectrum and orbital locations.”¹⁵ This action would be consistent with the Commission’s approach in its Part 25 streamlining proceeding.

In 2015, in response to the *Further Notice of Proposed Rulemaking* in the proceeding to update and clarify the FCC’s Part 25 rule governing satellite services,¹⁶ “SES argue[d] that a queue position established by a request to submit ITU filings should not block a later market access request by a non-U.S. licensed space station operator with ITU priority.”¹⁷ The Commission rejected that proposal, deciding that “if a non-U.S. licensed operator files a request for access to the U.S. market after the filing of a first-step application that is deemed mutually exclusive, [the Commission] generally will defer action on the market access request until after [the FCC has] resolved the earlier-filed application or mutual exclusivity concerns have been eliminated through coordination between the parties involved.”¹⁸

As DIRECTV explained in its reply comments to SES’s proposal in 2015, and as the Commission implicitly endorsed in its Part 25 *Second Report and Order*, “ITU priority does not guarantee the right to serve the United States.”¹⁹ Moreover, as AT&T explained in its opposition

¹⁵ EchoStar and DISH Comments at 9.

¹⁶ *Comprehensive Review of Licensing & Operating Rules for Satellite Services*, Further Notice of Proposed Rulemaking, 29 FCC Rcd 12116 (2014).

¹⁷ *Comprehensive Review of Licensing & Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713, ¶ 41 (2015) (“*Part 25 Streamlining Second Report and Order*”) (citing Joint Comments of SES Americom, Inc. and New Skies Satellites B.V., IB Docket No. 12-267, at 19 (filed Jan. 29, 2015)).

¹⁸ *Part 25 Streamlining Second Report and Order* ¶ 42.

¹⁹ Reply Comments of DIRECTV, LLC, IB Docket No. 12-267, at 4 (filed March 2, 2015); *Part 25 Streamlining Second Report and Order* ¶ 42.

to SES's Petition for Reconsideration of the *Second Report and Order*, SES's proposal – which EchoStar and DISH now endorse in the present proceeding – “appears [to] seek[] preferential treatment for foreign licensees.”²⁰ By contrast, under the Commission's existing practice of deferring action on a market access application until such time as any earlier-filed U.S. applications are processed or mutual exclusivity concerns have been addressed, U.S. and foreign licensees receive equitable treatment.

EchoStar and DISH offer no sound basis for reversing the Commission's prior decision with respect to the processing of market access petitions that claim ITU priority. Accordingly, their proposal should be rejected.

IV. AGGREGATE INTERFERENCE IS AN ISSUE BEST LEFT TO A FUTURE PROCEEDING.

EchoStar and DISH assert that “the Commission should seek comment as part of this proceeding on an appropriate aggregate interference limit in order to protect incumbent services including DBS and MVDDS.”²¹ The *Second NPRM* neither proposes aggregate interference rules nor otherwise addresses this issue. Accordingly, the question of whether an aggregate interference limit is appropriate for DBS bands is best left to a future proceeding in which commenters can provide technical analysis.

AT&T notes that any proposed rules in such a proceeding should seek to apportion aggregate interference among services. Failing to apportion the aggregate interference limit would leave one service susceptible to dominance of the limit by the others. Because aggregate interference is measured from the ground up, in this particular context such a policy would allow

²⁰ Statement of AT&T Opposing Petition for Reconsideration of SES Americom, Inc. and New Skies Satellites B.V., IB Docket No. 12-267, at 2 (filed Nov. 18, 2016).

²¹ EchoStar and DISH Comments at 5.

terrestrial MVDDS services to dominate the limit at the expense of DBS operations, thereby creating tremendous risk and uncertainty for DBS providers.

V. THE COMMISSION WAS CORRECT TO FOCUS ON DBS SERVICES IN THIS PROCEEDING.

The Commission’s purpose in issuing a *Second NPRM* in this proceeding – properly – was to “align DBS processing procedures with [the FCC’s] recently streamlined processing procedures for GSO fixed-satellite service (FSS) satellites and take into account changes in the regulations and provision of satellite communications services since the Commission last examined the licensing provisions for DBS over a decade ago.”²² As AT&T demonstrated in its opening round comments, DBS providers today serve tens of millions of subscribers and have been a key force for innovation in the market for multichannel video programming.²³ The Commission was therefore correct to focus this proceeding on how to promote DBS services and modernize the rules governing DBS licensing and applications while ensuring adequate protection for the millions of consumers enjoying incumbent DBS services. Some commenters, however, seek to undermine these policy objectives by using this proceeding as a platform to argue for the expansion of other services.²⁴ These attempts should be rejected.

As a threshold matter, commenters seeking to minimize the importance of DBS services

²² *Second NPRM* ¶ 1.

²³ *See* AT&T Comments at 2-5.

²⁴ *See* Comments of the MVDDS 5G Coalition, IB Docket. No 06-160, at 6-7 (filed Mar. 25, 2019) (asking the Commission to “consider the Coalition’s Petition [for rulemaking to permit use of 12.2.-127 GHz to provide two-way mobile broadband service] in tandem” with DBS modernization); *See* Comments of MDS Operations, Inc. and RS Access, LLC, IB Docket. No 06-160, at 7 (filed Mar. 25, 2019) (asking the Commission to use this proceeding to “reconceive use for the 12 GHz band increase broadband deployment by considering the MVDDS 5G Coalition Petition” and “grant[ing] the [Petition] in conjunction with the proposals outlined in the 2nd NPRM”); SES Comments at 4 (asking the Commission to “initiate an investigation of the potential public interest benefits of expanded, protected FSS use of the 12 GHz band”).

question the continued viability of DBS services – this suggestion is flatly controverted by the facts. First, new deployment of DBS facilities continues to occur. AT&T’s T15 satellite, which provides Ka- and Ku-band DBS services, was launched in 2015.²⁵ Its SKY-B1 satellite, a replacement DBS Ku-band satellite operating at 43.15° W.L., was launched in 2017.²⁶ And AT&T’s T16 satellite, which will replace and/or supplement DBS capacity at the nominal 103° W.L. orbital location, will be launched this year.²⁷ Moreover, as AT&T made clear in its opening comments, DBS providers today serve nearly 30 million households, and in some rural areas are the only MVPD offering available.²⁸ Further, even as overall MVPD subscriber counts are declining, there remains a vibrant market for DBS services serving almost 30 million households across the U.S., and DBS services remain a critical competitive force accounting for one third of the overall MVPD market.²⁹ By contrast, AT&T is not aware of a single MVDDS subscriber.

Moreover, and more fundamentally, this proceeding—which focuses on modernizing

²⁵ See Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC to Marlene H. Dortch, Secretary, FCC, Re: Completion of In-Orbit Testing of DIRECTV 15 (Call Sign S2930) (filed July 24, 2015). The DIRECTV 15 satellite was subsequently renamed T15. See Letter from Jennifer D. Hindin, Counsel for DIRECTV Enterprises, LLC to Marlene H. Dortch, Secretary, FCC, Re: DIRECTV Enterprises, LLC Notification of New Space Station Names (filed June 12, 2017).

²⁶ See Letter from Jennifer D. Hindin, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, Re: DIRECTV Enterprises, LLC Notice of Results of In-Orbit Testing and Commencement of License Term for SKY-B1, IBFS File Nos. SAT-MOD-20170221-00019, SAT-AMD-20150806-00054, SAT-RPL-20140221-00026, Call Sign S2922 (filed Mar. 28, 2017).

²⁷ See Application for Authorization to Launch and Operate T16 at Nominal 103 W.L., File No. SAT-RPL-20180913-00071 (stamp grant issued Mar. 27, 2019).

²⁸ See AT&T Comments at 3.

²⁹ See Leichtman Research Group, *Research Notes*, at 4 (4Q 2018), <https://www.leichtmanresearch.com/wp-content/uploads/2019/01/LRG-Research-Notes-4Q-2018.pdf>.

DBS service and licensing rules consistent with the regulatory developments—is simply not the appropriate venue to consider new rules or allocations for other services. The MVDDS 5G Coalition asks the Commission to “consider the Coalition’s Petition [for rulemaking to permit use of 12.2.-127 GHz to provide two-way mobile broadband service] in tandem” with DBS modernization and to “adopt a harmonized set of rules that strike the appropriate balance among competing uses.”³⁰ Commenters MDS Operations and RS Access make a similar request.³¹ However, the MVDDS 5G Coalition Petition is the subject of an entirely separate proceeding, for which the Commission has solicited and received public comment.³² The present proceeding, which is focused on DBS modernization and does not raise the Petition, is not an appropriate mechanism to advance the Petition, and the Commission should reject attempts to do so.

SES asks the Commission to “initiate an investigation of the potential public interest benefits of expanded, protected FSS use of the 12 GHz band.”³³ However, in contrast to the MVDDS filers, SES asks the Commission to “issu[e] a further notice in the instant proceeding to seek input on allowing FSS downlinks to operate under the DBS allocation in the 12 GHz band.”³⁴ AT&T agrees with SES that this issue is best taken up in a separate rulemaking item, perhaps in conjunction with the petition for rulemaking SES filed seeking authorization for FSS downlink

³⁰ *Supra* note 24.

³¹ *Id.*

³² *See* Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (filed Apr. 26, 2016). Indeed, AT&T has submitted its views on the MVDDS Petition in that proceeding, including pointing out that the Petition failed to “present[] any technical justification for revisiting the rules or provide[] any explanation of how DBS services might be protected from harmful interference if MVDDS services were mobile and two-way.” Opposition of AT&T to MVDDS 5G Coalition Petition for Rulemaking, RM-11768, at 1 (filed June 8, 2016).

³³ *Supra* note 24.

³⁴ *Id.*

operations in the 17.3-17.7 GHz bands.³⁵ Accordingly, the Commission should not consider these issues as it continues work on the *Second NPRM*, nor should it let these issues delay final rules on DBS modernization.

Finally, in its comments, SES argues that “[a]n FSS applicant seeking to initiate services from [the vacant] portion of the orbital arc should not be required to demonstrate that its operations would be compatible with theoretical future DBS service from those slots.”³⁶ While the issue of FSS requirements for any future use of DBS spectrum bands is best left to a subsequent proceeding, AT&T notes that as a matter of policy, the Commission should not enable FSS or any other service to encroach on planned DBS slots in the manner proposed by SES. Adopting such a proposal would allow non-DBS operations in this portion of the orbital arc to degrade the feasibility and value of planned DBS slots – at a time when the Commission is considering lifting the DBS licensing freeze to allow new DBS entry.

VI. CONCLUSION

AT&T respectfully requests that the Commission consider its proposals in the *Second NPRM* consistent with its initial comments in this proceeding as well as the reply comments provided herein.

Respectfully Submitted,

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April 22, 2019

³⁵ See Amendment of Parts 2 and 25 of the Commission’s Rules to Enable Primary Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.7 GHz Band, Petition for Rulemaking of SES Americom, Inc. (filed March 5, 2019).

³⁶ SES Comments at 5.