Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of Comprehensive Review of Licensing and Operating Rules for Satellite Services	IB Docket No. 12-267

OPPOSITION OF INTELSAT LICENSE LLC

Intelsat License LLC ("Intelsat") respectfully submits this Opposition to the Petition for Reconsideration filed by SES Americom, Inc. and New Skies Satellites B.V. (collectively, "SES") of the revised satellite licensing rules adopted by the Federal Communications Commission's ("FCC" or "Commission") Second Report and Order in the above-captioned proceeding.[1] In this Opposition, Intelsat comments on the International Telecommunication Union ("ITU") priority issues raised by SES and opposes a proposed change to Section 25.140 of the FCC's rules.

First, SES claims that the Commission's two-step U.S. satellite licensing process disadvantages foreign-licensed satellite operators seeking U.S. market access by contravening their ITU priority. This is curiously inconsistent with SES's previous position in which it supported overriding ITU priority held by U.S. licensees so that foreign licensees could benefit from the Commission's two-degree spacing rules. Intelsat believes that the FCC's new rules related to ITU submissions provide equal opportunity for both U.S. and non-U.S. licensed satellite operators, and do not require modification.

Second, SES seeks to modify the language in Section 25.140 detailing the interference showing that must be provided for Appendix 30B operations. Intelsat opposes SES's proposed change, which would expand the scope of the rule to require a compatibility demonstration that is

[1] Petition for Reconsideration of SES Americom, Inc. and New Skies Satellites B.V., IB Docket No. 12-267 (filed Sept. 19, 2016) ("SES Petition").

already—and more properly—handled under the ITU's coordination regime. Intelsat suggests alternate language that better adheres to ITU priority.

I. THE FCC'S TWO-STEP PROCESS PROVIDES EQUITABLE TREATMENT FOR U.S. AND FOREIGN-LICENSED SATELLITES

SES claims that the FCC's new two-step process for seeking U.S. satellite licenses will disadvantage foreign satellite licensees.[2] Specifically, SES asserts that foreigners are not treated fairly by the FCC's conveyance of first-come, first-served "queue priority" to prospective U.S. satellite licensees who ask the Commission to submit an ITU Coordination Request on their behalf. SES claims that foreign satellite operators enjoying superior ITU priority should not have second-in-the-queue U.S. market access applications deferred pending the submission and consideration of a step-one filer's U.S. space station application.[3]

In fact, the new two-step process promotes equality of U.S. and foreign satellite licensees. Previously, a prospective U.S. licensee could not have the United States submit a satellite network filing to establish ITU date priority until it filed a complete space station application.[4] This practice was at odds with most other licensing administrations that submit ITU coordination requests with much less technical information and well in advance of the domestic licensing process. In adopting this new process, the FCC explained that "it removes a competitive disadvantage for prospective Commission licensees compared to licensees in other countries, who are typically able to request submission of ITU filings without providing the detailed technical information required in a Commission space station license application."[5]

SES's objection to the two-step process appears to be founded on the concept that the FCC's

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2 *Id*. at 1.

3 *Id*. at 2-3.

4 *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, FCC 15-167, 30 FCC Rcd. 14713, 14719 (2015) ("Part 25 Order").

5 *Id*. at 14724.

domestic satellite rules should not negatively impact ITU priority. In this case, SES warns that a foreigner's ITU priority must be considered in order to "discourage attempts to use Commission processes to subvert the ITU regulatory framework relating to international coordination of satellite networks."[6] Curiously, this view is inconsistent with SES's previous position that the FCC's rules for foreign market access should supplant ITU priority enjoyed by a U.S. licensee. When earlier insisting that the Commission's domestic two-degree spacing rules trump a U.S. operator's ITU priority, SES argued that "the Commission should reaffirm its finding that two-degree spacing serves a valid purpose and should not be replaced by a system in which coordination between operators is based solely on ITU priority."[7] It is challenging to reconcile how SES finds it permissible for the FCC's domestic licensing rules to denigrate ITU priority held by U.S.-licensed satellite operators in the two-degree spacing context, but argues for respecting ITU priority to protect foreign satellite operators in the newly adopted two-step process. Indeed, perhaps the only common thread is that SES consistently supports the process—domestic U.S. rule or ITU priority—that best favors foreign-licensed operators.[8] Intelsat, in contrast, has consistently advocated in favor of respecting ITU priority and opposes the application of FCC rules that degrade ITU priority.[9]

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6 SES Petition at 12.

7 Joint Reply Comments of SES Americom, Inc. and New Skies Satellites B.V., IB Docket No. 12-267 at 5 (filed Mar. 2, 2015).

8 *See* Reply Comments of Intelsat License LLC, IB Docket No. 12-267 at 7 (Mar. 2, 2015) (describing SES's vigorous defense of the importance of ITU priority in SES's dispute with DIRECTV at 103° W.L., where SES was adamant about the need for the FCC to protect the higher priority Canadian 17/24 GHz ITU filing). *See* In the Matter of DIRECTV Enterprises, LLC Applications for Modification of the License to Launch and Operate DIRECTV RB-2 and for Extension or Waiver of the Launch and Operations Milestone, File Nos. SAT-MOD-20140612-00066 & SAT-MOD-20140624-00075, Petition to Deny of SES Americom, Inc. and Ceil Satellite Limited Partnership at 19-23 (filed Sept. 2, 2014) (urging the FCC to "ensure that the U.S.-licensed RB-2 payload does not cause harmful interference to the higher priority Canadian satellite at the same location").

9 *See, e.g.*, Letter from Susan H. Crandall, Intelsat, to Marlene H. Dortch, FCC, IB Docket No. 12-267 (filed Aug. 10, 2015); Reply Comments of Intelsat License LLC, IB Docket No. 12-267

Contrary to SES's assertion, the Commission's two-step process does not "subvert the ITU framework."[10] The FCC's new two-step process allows an earlier filed application to be granted—even if that applicant does not have ITU priority—but such grant will be subject to completion of ITU coordination, and the U.S. licensee may be required to cease operations or be subject to further conditions upon launch of the satellite with an earlier ITU protection date.[11] Whether the U.S. licensee entered the queue through a step-one Coordination Request or a step-two space station application does not impact this licensing outcome. The FCC has consistently indicated that the domestic and ITU processes are separate and independent.[12] In sum, holding ITU priority does not guarantee receipt of a U.S. license or market access grant and receiving a U.S. license or market access grant does not guarantee ITU priority.[13]

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at 5-9 (filed Mar. 2, 2015); Comments of Intelsat License LLC, IB Docket No. 12-267 at 19-23 (filed Jan. 29, 2015).

[10] SES Petition at 12.

[11] In contrast, the FCC recently did not impose a requirement to cease operations in a proceeding involving two non-U.S.-licensed satellite operators with non-U.S. ITU filings. *See* ViaSat, Inc., Letter of Intent for Authority to Access the U.S. Market Using a Non-U.S. Licensed Ka-Band Geostationary Satellite at the Nominal 109º W.L. Orbital Location, File No. SAT-LOI-20160208-00015 at note 3 (stamp grant Oct. 25, 2016) ("We note that the circumstances presented here involve proposed foreign-licensed satellites and non-U.S. filings with the ITU. We expect the operators to work in good faith to resolve any dispute. In accepting this grant of market access, ViaSat bears the risks inherent in the international coordination process.").

[12] *See, e.g., Amendment of the Commission's Space Station Licensing Rules and Policies,* Second Order on Reconsideration, 31 FCC Rcd 9398, 9410 (¶ 32) (2016)("*Second Order on Reconsideration*"); *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3 -17-7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Second Order on Reconsideration, 25 FCC Rcd. 15718, 15722-25 (¶¶7-13) (2010); *Amendment of the Commission's Space Station Licensing Rules and Policies,* First Report and Order, 18 FCC Rcd. 10760, 10870 (¶ 295) (2003).

[13] Intelsat further notes that SES's assertion that the FCC only grants "temporary" authority to U.S. licensees who do not hold ITU priority is mistaken. SES Petition at 9-11. First, the authority granted is not for a limited period of time; it is permanent authority subject to the outcome of the international coordination process. *See Second Order on Reconsideration* at ¶ 32. Second, the cases cited by SES pre-date, and are mooted by, the FCC's use of a first-come, first-served process

SES's argument that the two-step process in any way "conflicts with U.S. duties" under the World Trade Organization ("WTO") Agreement to open its satellite services market[14] is severely undermined by the reality of foreign-licensed satellite operators seeking to serve the U.S. market. Since January 1, 2016, approximately twelve U.S. satellite license applications have been filed. In that same time period, approximately twenty-two letters of intent to serve the U.S. market or petitions to be added to the FCC's Permitted List were filed by non-U.S. licensees. Moreover, in the current processing round for non-geostationary orbit ("NGSO") satellites,[15] more than half are U.S. market access petitions, rather than applications for a U.S. license.[16] Finally, even after adoption of the new Part 25 rules, SES's affiliate, SES DTH do Brasil Ltda., filed a petition for U.S. market access, rather than seek a U.S. satellite license.[17]

Clearly, there is no shortage of non-U.S.-licensed satellite operators seeking to serve the United States. It is not hard to see why. Most significantly, despite receiving the same protections and following the same rules as U.S. licensees, non-U.S.-licensed satellite operators that access the

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and queue. SES Petition at 10-11 (citing *KaStarCom*, a 2001 decision, and *Anik F2 Order*, a 2002 decision).

14 SES Petition at 6.

15 *See Satellite Policy Branch Information, Cut-Off Established for Additional NGSO-like Satellite Applications or Petitions for Operations in the 10.7-12.7 GHz, 14.0-14.5 GHz, 17.8-18.6 GHz, 18.8-19.3 GHz, 27.5-28.35 GHz, 28.35-29.1 GHz, and 29.5-30.0 GHz Bands*, Public Notice, DA 16-1804 (Jul. 15, 2016).

16 Because NGSO license applications have a $454,705.00 filing fee, it is easy to see the benefits of filing a petition for U.S. market access, with no fee. Because of this fee disparity favoring non-U.S. licensees, the FCC has lost over $3 million in filing fees in this processing round alone.

17 *See Policy Branch Information; Satellite Space Applications Accepted for Filing*, Public Notice, Report No. SAT-01196, File No. SAT-PPL-20160918-00093 (Oct. 28, 2016).

U.S. market currently pay neither application nor regulatory fees.[18] In short, the facts do not support any argument that non-U.S. licensees are harmed by the FCC's processes.

SES also claims that the FCC's two-step process will allow a first-step filer to "tie up" resources, thereby blocking a foreign-licensed satellite from providing service to the U.S. market for over two years.[19] But there is absolutely nothing preventing a foreign-licensed satellite operator from filing a market access petition *before* another operator initiates the two-step process by requesting the U.S. make an ITU filing. In other words, given SES's assumption that the non-U.S.-licensed operator has ITU priority, why hasn't it simply filed for U.S. market access if it is worried about being first in the FCC's licensing queue?

Moreover, it is important to note that the ITU priority concept is, in fact, a first-come first-served regime in itself. Often, satellite operators have to contend with speculative earlier ITU filings that arguably "tie up" orbital resources for up to seven years, not just two. All satellite operators, SES included, understand this fact of orbital slots risk management and contend with it. The FCC's two-step process at least greatly reduces the speculative element of the pre-application ITU filing process by imposing a significant financial requirement—in the form of the pre-application bond—on the filer.[20]

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[18] *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd. 24094, 24163 (1997).

[19] SES Petition at 4.

[20] SES's claim that a $500,000 bond is not sufficient to deter speculation has been thoroughly reviewed and decided by the FCC. *See* SES Petition at 8 ("the upside to the U.S. filer may more than outweigh the potential loss of the $500,000 bond imposed by the Commission at the ITU filing stage."). In the Part 25 Order, the FCC described the rationale for adopting a $500,000, demonstrating why this amount would be sufficient to deter speculation. Part 25 Order at ¶ 33. SES has provided no new facts or arguments to modify the FCC's analysis.

In fact, SES's argument that the U.S. is somehow "warehousing" spectrum[21] is particularly odd coming from an operator that relies heavily on foreign filings to operate its satellites. A non-U.S. licensee can, in many non-U.S. jurisdictions, make any number of ITU filings, regardless of whether the operator intends to use them or not. Once those filings are made, the non-U.S. operator has seven or eight years per ITU rules before it needs to operate a satellite against those foreign ITU filings, thus essentially allowing the foreign administration to "warehouse" spectrum for all those years. After seven or eight years, the foreign operator can simply decide not to use the filings—often at no cost other than possibly ITU cost-recovery charges. The U.S., by contrast, requires an entity making a U.S. ITU filing to post a $500,000 bond and—within only *two* years—file an application to use all the frequencies in that filing or lose the bond. Moreover, that application carries another $3,000,000 in bond costs. And, the U.S. operator is required to pay ITU cost-recovery charges. So by any measure, the U.S. administration is likely the *most* vigilant in ensuring that spectrum is not warehoused.

Finally, there is no need for a separate process, as SES requests,[22] to resolve an assumed "inequity" because the FCC permits—indeed welcomes—foreign operators to participate in the two-step process by requesting that the United States submit an ITU Coordination Request. As such, foreign satellite operators already have the same ability to obtain queue priority without filing a full application as U.S. operators. In today's global world, there is no legal impediment to satellite operators from other countries seeking to obtain a U.S. satellite license directly rather than seeking a grant of market access. Indeed, SES already holds both U.S. and non-U.S. satellite licenses.

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21 SES Petition at 3.

22 *Id.* at 13-15.

II. SES'S PROPOSED CHANGE TO SECTION 25.140 WOULD UNNECESSARILY EXPAND THE SCOPE OF APPENDIX 30B COMPATIBILITY DEMONSTRATIONS

SES also claims that changes are needed to Section 25.140(a)(3)(iv), which specifies the requirements for showing that proposed operations using Appendix 30B spectrum are compatible with other networks.[23] Specifically, under Section 25.140(a)(3)(iv), an applicant must provide "a demonstration that it is compatible with other U.S. ITU filings under Appendix 30B."[24] SES claims that this language is problematic because it (1) does not reference non-U.S. filings and (2) does not incorporate the relevance of ITU priority.[25]

Intelsat opposes any change that would expand this rule to cover non-U.S. filings. This rule was adopted specifically to address compatibility between U.S. licensees because the ITU process leaves intra-administration coordination requirements to be addressed by the concerned administration's internal processes as a sovereign matter. The FCC rule was not intended to cover U.S. to non-U.S. coordination, because such coordination requirements are already addressed by the ITU process, not through the FCC's domestic licensing requirements.

SES's proposed change attempts to expand the scope of Section 25.140(a)(3)(iv) to include non-U.S. ITU filings:

> "With respect to proposed operation in the 4500-4800 MHz (space-to-Earth), 6725-7025 MHz (Earth-to-space), 10.70-10.95 GHz (space-to-Earth), 11.20-11.45 GHz (space-to-Earth), and/or 12.75-13.25 GHz (Earth-to-space) bands, a statement that the proposed operation will take into account the applicable requirements of Appendix 30B of the ITU's Radio Regulations and a demonstration that it is compatible with **affected** ~~**other U.S. ITU**~~ filings under Appendix 30B."

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23 *Id*. at 15-16.

24 47 C.F.R. § 25.140(a)(3)(iv).

25 SES Petition at 16.

Replacing "other U.S." with "affected" would require a demonstration of compatibility with both U.S. and non-U.S. filings. This rule, however, is narrowly tailored to ensure compatibility of a new U.S. filing with *other U.S.* filings. It is needed, according to the FCC, "to protect the rights of existing U.S. filings from being unduly eroded under the relevant ITU protection criteria by another U.S. filing."[26] The ITU's coordination requirements do not cover multiple networks filed by the same administration or require coordination with higher priority networks of the same administration. Implicit in the ITU process is the assumption that administrations handle conflicts among their own filings through their internal processes as a matter of sovereignty. It is this internal coordination between two U.S. Appendix 30B filings that the FCC's Section 25.140(a)(3)(iv) addresses. In contrast, the ITU coordination process already addresses the compatibility between U.S. and non-U.S. satellite ITU filings, thus obviating the need for SES's proposed change.

Expanding the scope of the rule, as would result by SES's proposed change, would also impose an unnecessary burden on, and create a potential problem for, U.S. licensees. There are many ITU filings for which there are no concrete plans to launch and operate. Before deploying satellites, operators carefully assess the risks associated with earlier ITU filings in order to determine whether these filings are likely to materialize into actual satellite programs. In certain cases, a satellite operator may elect not to coordinate with certain filings based on market intelligence or as a calculated risk. As such, accelerating a U.S. licensee's obligation to coordinate with such filings from prior to operation (under ITU rules) to the time of initial licensing (under SES's proposed modified FCC rule) would greatly, and in many cases unnecessarily, increase a U.S. satellite licensee's coordination obligations. Such early coordination is not required under the general ITU process and could potentially block a U.S. applicant from obtaining a license.

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[26] Part 25 Order at ¶ 47.

Moreover, other administrations do not impose such coordination requirements on their licensees. Creating such an additional requirement only for U.S. licensees would competitively harm them, diminish the value of the United States' ITU filings, and discourage satellite operators from licensing through the U.S. The Commission should therefore reject SES's attempt to broaden the Appendix 30B demonstration requirement.

At the same time, Intelsat agrees that the Commission's rules should clearly support consistency with ITU priority. Instead of SES's proposed term "affected" (which, as noted above, would improperly include both U.S. and non-U.S. ITU filings in the scope of the rule), Intelsat proposes the following:

> "…, a statement that the proposed operation will take into account the applicable requirements of Appendix 30B of the ITU's Radio Regulations and a demonstration that it is compatible with **other higher priority** U.S. ITU filings under Appendix 30B."

This modified language clarifies which U.S. filings must be considered in the demonstration, without unnecessarily broadening the scope of the rule.

III. CONCLUSION

Intelsat believes that the FCC's new two-step process related to ITU submissions provides equal opportunity for both U.S. and non-U.S. licensed satellite operators, and does not require modification. Intelsat objects to SES's proposal to expand the scope of Section 25.140(a)(3)(iv) to include non-U.S. ITU filings. Intelsat does agree that Section 25.140(a)(3)(iv) should be clarified to ensure consistency with ITU priority, by more specifically limiting its applicability to higher priority U.S. Appendix 30B filings.

Respectfully submitted,

/s/ Susan H. Crandall

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November 18, 2016

CERTIFICATE OF SERVICE

I, Barbara Pomeroy, do hereby certify that on this 18th day of November 2016, a copy of the foregoing Opposition of Intelsat License LLC is being sent via first class, U.S. Mail, postage paid, to the following:

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