

**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)

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 reply comments on the Petition for Clarification or Declaratory Ruling filed by Eutelsat S.A. ("Eutelsat") in the above-captioned proceeding.¹ The Petition seeks Federal Communications Commission ("FCC" or "Commission") clarification of Section 25.140(d) of the Commission's Rules, which provides 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

DIRECTV is an operator of space and earth stations and, under FCC Rule 25.140(d), has submitted to the Commission a notification of operations at power levels above the FCC's "routine" limits.³ Thus, DIRECTV has a direct interest in ensuring that any clarification of Section 25.140(d) adheres to the rule's intended purpose.

The Commission's purpose in adopting Rule 25.140(d) is resoundingly clear. It is intended to protect existing customer services and ensure their continued operation at non-

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

² 47 C.F.R. § 25.140(d).

³ *See Notifications of "Non-Routine" Transmission Levels*, Public Notice, DA 18-779 (Jul. 26, 2018) (SKY-B1, call sign S2922, notified on Sep. 19, 2016).

routine levels. Stated plainly, the Commission adopted the rule “to allow *continued transmissions* above routine levels upon notice to the Commission, even if such levels are not coordinated with later applicants and petitioners for market access.”⁴ The FCC also underscored that

“[i]f future operators are given adequate notice of such *pre-existing*, non-routine operation, we do not believe it serves the public interest to require the existing system to reduce transmit power density levels to protect a later-authorized, two-degree compliant operator, in a manner that may preclude *continued provision of the service*, in the event the two operators do not come to a successful coordination. Indeed, *continuation of such existing operations* would promote continuity of service and encourage capital investment.”⁵

In its comments, SES Americom, Inc. (“SES”) suggests that the Commission should go beyond the scope of this original rationale and permit notifications to be submitted for power levels contained in coordination agreements, regardless of whether the coordinated non-routine power levels were in use to serve customers at the time of the notice.⁶ Accepting notices based solely on coordination agreements in the absence of actual services would go beyond the stated purpose of Rule 25.140(d) and introduce the possibility, however slim, that operators may warehouse spectrum. Any Commission action on Eutelsat’s petition should maintain the rule’s clear purpose—to provide a measure of certainty to operators that their existing services at non-routine levels will be protected.

The Commission need not, however, create additional or elevated requirements for proof of existing satellite operations at non-routine power levels. For example, the FCC should reject Eutelsat’s idea that a Section 25.140(d) notice of non-routine power levels is ineffective if not

⁴ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, IB Docket No. 12-267, Second Report and Order, ¶ 108 (2015) (“*2015 Second Report and Order*”) (emphasis added).

⁵ *Id.* (emphasis added).

⁶ *See* Comments of SES Americom, Inc., IB Docket No. 12-267, 3, filed Oct. 29, 2018

supported with evidence of a U.S. earth station license authorized to correspond with the satellite's non-routine power levels.⁷ For operators with earth stations located outside the United States, demonstrating compliance with such a change would be onerous and potentially impossible. In addition, FCC rules already require the provision of truthful and accurate statements to the Commission,⁸ thus mooted any need for the Commission to identify ineffective notices.⁹ Moreover, satellite operators customarily resolve operational questions successfully through the well-established coordination process without the need for additional regulatory intervention.

In sum, any agency clarification in this proceeding should conform to the rule's original intent to protect existing services. If such clarification is deemed necessary, it should be accomplished through issuance of a Public Notice providing guidance on existing rule 25.140(d) rather than modification of the rule.

Respectfully Submitted,

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⁷ See *Eutelsat Petition* at 4-5 (seeking clarification that notices are limited to previously authorized power levels and noting that "no earth stations appear authorized to communicate with AMC-4 at non-routine power levels").

⁸ See 47 C.F.R. § 1.17.

⁹ See *Eutelsat Petition* at 8.