

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Notification of Non-Routine
Transmission Levels Pursuant to Section
25.140(d) of the Commission's Rules

IB Docket No. 12-267

REPLY COMMENTS OF INTELSAT LICENSE LLC

Intelsat License LLC ("Intelsat") respectfully submits its reply comments in the above-captioned proceeding.¹ In the Petition for Clarification or Declaratory Ruling of Eutelsat S.A. ("Petition"), Eutelsat S.A. (Eutelsat") seeks clarification of Section 25.140(d) of the Federal Communication Commission's ("FCC" or "Commission") rules. In its Petition, Eutelsat asks the Commission to clarify that an operator can only file a non-routine power level if, at the time of filing, it has services operating at the non-routine level.² One party, SES Americom, Inc. ("SES"), filed comments in response to the Petition, arguing that active service at the higher power level is not a prerequisite to filing a notification.³

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

² See *id.* at 4-5.

³ See Comments of SES Americom, Inc., IB Docket No. No. 12-267, filed Oct. 29, 2018 ("SES Comments") at 3 (stating "the Commission should ... allow satellite operators the latitude to submit notifications describing 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").

Intelsat agrees that the rule itself is not clear on this point. However, Intelsat believes that SES's interpretation of the rule would appear to run counter to the Commission's intent as expressed in its Second Report & Order ("Second R&O") adopting the rule -- to ensure service continuity.⁴

SES argues that Section 25.140(d) applies "regardless of whether [the coordinated non-routine levels] are in use at the time,"⁵ and that a narrow interpretation of the rule "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."⁶ However, SES's argument is not supported by the Commission's language in the Second R&O and, if accepted, would allow Section 25.140(d) to be used to prevent others from providing service despite the fact that no SES service would be negatively impacted at the time the later-in-time operator begins providing service.

Specifically, Section 25.140(d) was adopted by the Commission to "allow *continued* transmission above routine levels."⁷ In fact, in the Second R&O the FCC consistently refers to the operations to be protected by the rule as being continued or pre-existing.⁸ As such, it is clear

⁴ *Comprehensive Review of Licensing & Operating Rules for Satellite Services*, Second Report and Order, FCC 15-167 (rel. Dec. 17, 2015) ("Second R&O").

⁵ SES Comments at 3.

⁶ Reply of SES Americom, Inc., File No. SAT-PPL-20180302-00018, Jun. 4, 2018 at 5 ("SES Reply").

⁷ Second R&O at para. 108 (emphasis added).

⁸ *Id.* at para. 106-110 ("continue to provide service," "allow continued transmission," "pre-existing, non-routine operations," "continuation of such existing operations," and "continuity of existing services").

that the rule is intended to cover operations existing *prior* to the arrival of a later-in-time operator and does not cover services that are not yet operational. As such, an operator should only be allowed to notify coordinated non-routine transmission levels once it has begun providing service at those levels.

While Intelsat agrees with Eutelsat on the above point, it disagrees with Eutelsat's proposal to tie the validity of a Section 25.140(d) notice to a U.S. earth station previously authorized to operate at non-routine power levels.⁹ In its Petition, Eutelsat cites the lack of a U.S.-licensed earth station authorized to communicate with AMC-4 at SES's notified non-routine power levels as evidence of a deficient Section 25.140(d) notice.¹⁰ This argument incorrectly assumes, however, that a satellite's notified non-routine power levels correspond only to earth stations located in the United States. If this interpretation was adopted, it would inappropriately exclude the use of notified non-routine power levels serving non-U.S. licensed earth stations.¹¹ Further, if a Section 25.140(d) notice is challenged, Intelsat believes that it is sufficient for the notifying operator to file a response confirming that it is currently providing service to customers at the non-conforming level set forth in the notice.

Finally, although its relevance to this matter is unclear, SES's suggestion that an earlier Intelsat Section 25.140(d) notification for Galaxy 28 was inaccurate, is itself inaccurate.¹² As

⁹ Petition at 5.

¹⁰ Petition at 6-7.

¹¹ Even for service in the United States, non-routine levels can apply to downlink EIRP levels for broadcasting applications, and such non-routine levels would not be captured in any earth station authorization.

¹² SES Comments at 7. SES also references the notice for Galaxy 16, which Intelsat revised. *See* Letter from Susan H. Crandall, Associate General Counsel, Intelsat Corporation, to

Intelsat previously stated, the power level Intelsat notified for Galaxy 28's non-routine C-band levels *was* correct and SES's objection was without merit.¹³

Respectfully submitted,

Intelsat License LLC

By: /s/ Susan H. Crandall

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November 13, 2018

Marlene H. Dortch, Secretary, Federal Communications Commission, File No. STA-RPL-20051118-00233 (Mar. 31, 2017).

¹³ See Letter from Susan H. Crandall, Associate General Counsel, Intelsat Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission, File Nos. STA-RPL-20051118-00233 and SAT-MOD-20050422-00089 (Mar. 31, 2017) at 1.