Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Space Station Licensing Rules and Policies	)	IB Docket No. 02-34
	)	
2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations	)	IB Docket No. 00-248

REPLY COMMENTS OF SES AMERICOM, INC.

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SUMMARY

The vast majority of commenters on the Notice of Proposed Rulemaking support the Commission's efforts to improve the processing round system, rather than adopting a radically new, untried first-come, first-served approach to licensing. SES AMERICOM agrees that processing rounds can be speedier and more efficient if the Commission adopts the proposals made by the Satellite Industry Association in its comments.

Upon analysis, the main reasons put forth by Teledesic LLC in favor of the first-come, first-served approach in fact do not support that approach. First-come, first-served will increase speculation, rather than reduce it. Individualized attention is a hallmark of the processing round and would not be improved by adopting first-come, first-served. Finally, processing rounds facilitate prevention of interference, rather than increase the likelihood of interference. Spectrum sharing – and thus accommodation of additional operators -- is much more likely to occur as part of a processing round. Teledesic's other reasons for adoption of first-come, first-served are equally unpersuasive.

Intelsat's version of first-come, first-served is equally problematic. First-come, first-served licensing is not improved by limiting its application to established bands. The same sort of opportunities for gamesmanship and speculation exist. Intelsat's other suggestions are flawed. For example, a requirement for a $10 million bond imposes a substantial burden on incumbent satellite operators and could pose a significant hurdle for new entrants. The Commission should not "deem" granted any application that is

subject to a petition to deny or other opposition. Nor should the Commission eliminate the requirement for C-band linear polarization.

The Commission should reject the proposals of the Cellular Telephone & Internet Association since those proposals ignore proper spectrum management policies and include milestones that are unworkable and would only increase the Commission's workload.

Finally, the Commission should adopt the proposals of PanAmSat Corporation regarding improving and clarifying the Commission's replacement expectancy policy. Replacement expectancy is key to every satellite operator's business plan.

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SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, hereby submits its reply to the comments filed in response to the Notice of Proposed Rulemaking and First Report and Order (the "*NPRM*") issued by the Commission in the above-captioned proceeding.

With two exceptions, the commenters urged the Commission to reform and streamline its current processing round procedures, rather than adopt an untried, radically different approach. The Commission should not ignore the consensus of almost the entire U.S. satellite industry[1] and adopt an approach supported only by Teledesic

[1] *See* Comments of the Satellite Industry Association ("*SIA Comments*"); Comments of the The Boeing Company ("*Boeing Comments*"); Comments of PanAmSat Corporation ("*PanAmSat Comments*"); Comments of Hughes Network Systems, Inc., Hughes Communications, Inc. and Hughes Communications Galaxy, Inc. ("*Hughes Comments*"); Comments of Pegasus Development Corporation; Comments of Final

LLC ("Teledesic")[2] and Intelsat LLC ("Intelsat").[3] The reasons set forth by Teledesic for adoption of the "first-come, first served" approach are flawed and do not support the suggested approach. Contrary to Teledesic's contention, the processing round procedures can be fixed. Intelsat's suggestions are similarly problematic and should not be adopted. The Commission should also not adopt the proposals made by the Cellular Telecommunications and Internet Association ("CTIA"), as the proposals ignore the concept of sound spectrum management and, with respect to milestones, are unworkable.[4] Finally, the Commission should adopt the suggestions of PanAmSat Corporation ("PanAmSat") to improve and clarify the scope of its replacement expectancy policy.

I. TELEDESIC'S REASONS TO SUPPORT FIRST-COME, FIRST-SERVED ARE FLAWED.

Like Teledesic, SES AMERICOM agrees with the Commission's objective of achieving a speedier and more efficient means of licensing satellites. SES AMERICOM disagrees, however, that first-come, first-served would be an effective means of achieving this objective. The disagreement begins with the reasons put forth by Teledesic to support first-come, first-served. Teledesic offers three main reasons: (1) processing rounds promote speculative filings; (2) first-come, first-served gives the Commission the ability to scrutinize individual applications; and (3) first-come, first-

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Analysis; Comments of Inmarsat Ventures PLC. (All comments are dated June 3, 2002.)

2 Comments of Teledesic LLC, June 3, 2002 ("*Teledesic Comments*").

3 Comments of Intelsat LLC, June 3, 2002 ("*Intelsat Comments*").

4 Comments of CTIA, June 3, 2002 ("*CTIA Comments*").

served encourages applicants to minimize potential interference before they file.[5] In addition, Teledesic cites serious problems with processing rounds to support adoption of first-come, first-served. Upon examination, these further problems do not support rejection of the processing round system.

A. First-come, First-served Will Increase Speculation.

Adoption of the first-come, first-served approach will likely lead to more speculative filings than were ever filed in a processing round.[6] The moment that the Commission adopts first-come, first-served, there would likely be an avalanche of applications for all available orbital slots. Applications will be made by existing operators wishing to protect their future business plans or stymie their competitors' plans, and by others who would hope to sell the licenses they receive at exorbitant prices to those who would really use the licenses.

This inevitable rush to file would make speedy grant of licenses impossible. There would be a deluge of oppositions based on interference to existing satellites. In addition, the Commission would have to determine whether a proposed satellite system that is first in line will interfere with the satellite that is next in line or with a satellite that is first in line for another orbital location. In other words, speculative filings and the first-come, first-served approach would likely bring the licensing process to a halt, instead of halting speculative filings.

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5 *Teledesic Comments* at 7-9.

6 Other commenters have also made this point. *See, e.g., PanAmSat Comments* at 5-6; *SIA Comments* at 23.

Teledesic asserts that filing windows create a "land rush" of speculative applications.[7] There is no doubt that when the Commission announces a filing window, any operator that might want to file an application will do so, rather than risk forever losing the chance. But SES AMERICOM believes the solution to avoiding speculative filings in a processing round is enforcement of the Commission's existing qualification rules and speed in processing.[8] As discussed in the *SIA Comments*, speed can be achieved best by reforming the processing round system.[9] Adopting first-come, first-served would not produce a more efficient system.

B. Processing Rounds Provide Individual Attention.

Teledesic posits that "group processing" prevents the Commission from addressing the "merits of individual applications."[10] This is simply untrue. In fact, in a processing round, the Commission is forced to evaluate and understand each application before acting. Equally important, first-come, first-served will not produce a situation in which the Commission can look at any application in isolation from others. There will always be arguments about interference and mutual exclusivity, and the Commission will not be able to grant an application without comparing it to others. This is particularly the case with respect to new satellite service proposals, where issues of overlap and interference – both with existing, licensed services and with other, newly filed proposals

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7 *Teledesic Comments* at 5.

8 *Cf. id.* at 27.

9 *SIA Comments* at 8.

10 *Teledesic Comments* at 5.

– can be expected to consume not only applicant and FCC staff resources, but also huge amounts of time before any decisions can be made.

To grant an application without comparing it to others would mean replacing an examination of the "merits of individual applications" with simply a determination of who filed first. As pointed out in the *Hughes Comments*, individualized attention, without regard to other applications, "is legally unsustainable."[11]

C. Processing Rounds Facilitate Prevention of Interference.

Teledesic argues that first-come, first-served will "encourage applicants to minimize potential interference before they file,"[12] and that current satellite operators depend on the Commission to do "what should be the industry's job."[13] This is clearly an exaggeration designed to support the first-come, first-served approach. In fact, as other commenters recognize, the opposite is true.[14] Before filing any application, regardless of whether it is in a processing round context, operators look at all of the factors cited by Teledesic: locations already licensed, previously filed applications, the prospect that existing licensees might not launch, the prospect that pending applications might not be granted, the ITU coordination priorities, and the likelihood that international coordination will be possible.[15] It would be against the interest of any legitimate satellite operator to

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[11] *Hughes Comments* at 9-14.

[12] *Teledesic Comments* at 9.

[13] *Id.* at 10.

[14] *See, e.g., Boeing Comments* at 5.

[15] *Teledesic Comments* at 9-10.

file for a slot that it knew was unavailable in the hope that the Commission would give the applicant a license for a viable location.

Furthermore, processing rounds actually encourage prevention of interference and more efficient use of scarce spectrum resources – something that first-come, first-served would not do. For example, two applicants that would otherwise interfere with one another might agree each to use satellite or earth station diversity, or they might divide the available frequencies, or adopt some other means to accommodate both proposed satellites. Thus, it might be possible for the two applicants to use adjacent orbital locations provided that each one uses 26-inch dishes. But if one applicant first gains authorization to use 18-inch dishes, there may be no hope for a second applicant's system. The first applicant would have no incentive to cooperate in any way with the second applicant's sharing plan. The only way to ensure the socially optimal result – to ensure that both applicants agree to use 26-inch dishes and thereby enable two providers to operate where one would otherwise – would be to place them on an equal footing, and give neither licensee the ability to exclude the other. This is possible in a processing round context, but not under a first-come, first-served system.

Finally, SES AMERICOM believes first-come, first-served actually could create a disincentive to minimizing potential interference. It might require revealing the operator's business plans and intentions regarding use of orbital slots to a competitor prior to filing. Prior notification for purposes of avoiding interference could give that competitor vital information it could use to prepare and file an application for that orbital slot. In such a case, under the first-come, first-served system, the operator originally planning to use the orbital position would lose it.

D. Teledesic's Other Problems with Processing Rounds are Equally Groundless.

Teledesic makes a number of other arguments as to why processing rounds should be replaced by first-come, first-served. Each of these arguments lacks merit and does not support elimination of processing rounds.

1. Processing Rounds do not Block Innovative Proposals.

Teledesic states that processing rounds allow "incumbents" to prevent "innovative proposals" from being properly licensed.[16] This argument does not withstand scrutiny. Teledesic itself is a good example of an innovative proposal that got licensed. It was the one and only non-geostationary applicant in the first Ka-band processing round. The "incumbents" – whoever they may be – did not file applications to block Teledesic's innovative proposal. More importantly, the Commission has the ability to end delays in processing rounds. By reforming and shortening the processing round system as suggested by SIA and others, and by making decisions more quickly, the ability to block innovative proposals – to the extent it really is a problem -- will be reduced.

In any event, Teledesic overstates the extent to which first-come licensing could prevent parties from throwing up roadblocks against one another. There would still be an opportunity for public comment and the Commission would receive and must consider petitions to deny, comments and objections.[17] To the extent that any applicant seeks merely to obstruct the path of another, these proceedings could provide ample

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[16] *Id.* at 5.

[17] *Id.* at 11.

opportunity to do so. Foreclosing the ability to file competing applications would merely remove one tactic that can be used.

2. Processing Rounds are Able to Deal with Hybrid Applications and Do Not Warehouse Spectrum.

Teledesic claims that the FCC's definition of processing groups "overlooks the complexity" of satellite design.[18] Presumably Teledesic means that it is difficult to deal with hybrid satellite applications. However, hybrid applications have never caused insurmountable problems in the past. Nor is it clear how first-come, first-served would make processing hybrid applications any easier. On the contrary, hybrid applications could prove extremely difficult to license in a first-come process because the Commission intends to establish separate queues. So an applicant could be foreclosed from using a critical frequency band simply because another applicant filed for that band a few seconds before.

Teledesic also claims that delays caused by processing rounds effectively "warehouse" spectrum. As has been pointed out by SES AMERICOM and others, processing rounds do not need to take a long time. Numerous commenters pointed to specific procedures that could dramatically reduce the time required for processing rounds.[19] Commenters also made suggestions for streamlining other aspects of licensing in order to free Commission staff to deal with processing rounds.[20] The Commission needs to adopt these suggestions, including the strict deadlines proposed, and adhere to

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[18] *Id.* at 5.

[19] *See, e.g., PanAmSat Comments* at 8-13.

[20] *See, e.g., SIA Comments* at 14-15.

them, and it needs to make swift decisions on the merits. It does not need first-come licensing to reduce licensing delays.

E. The Processing Round System Can Be Reformed.

Teledesic claims that it is "both hopeless and pointless" to try to reform the processing round procedures because most of the participants in processing rounds have no interest in actually having their applications granted.[21] Teledesic's statement is simply wrong. It is absurd to say that the vast majority of the U.S. satellite industry, which supports processing rounds, has no interest in receiving licenses or seeks to use the process for the purpose of delaying receipt of those licenses. The very existence and profitability of satellite manufacturers, launch service providers and operators depend on an efficient, well-functioning licensing system.

SIA offered a number of proposals for streamlining the processing round procedures, rather than rejecting the system completely. These proposals include retaining the fungibility policy, as Teledesic predicted.[22] But support for the fungibility policy is not based on a desire to let the Commission do industry's work, but rather is intended to give the Commission flexibility, where needed, to deal with mutual exclusivity. The most significant suggestion made by SIA is to reduce drastically the amount of time between applications and a Commission decision.[23] SES AMERICOM fully supports this position. The shortened period for industry negotiation shows

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[21] *Teledesic Comments* at 31.

[22] *Id.* at 33.

[23] *SIA Comments* at 14.

industry's desire for licenses – not its desire to wait for years until the Commission fixes the problem.

To be sure, everyone has a favorite horror story; some licensing processes have dragged on for years. But it is facile to suggest that, simply because a process has encountered difficulties, it must therefore be abandoned. The solution to the problems that sometimes arise in satellite licensing proceedings is not to abandon them altogether; rather, it is to solve those problems.

The Commission can and should make the tough decisions that it is required to make by the Communications Act. It should begin by enforcing its threshold qualification requirements: it should reject out of hand those applicants that are not fully qualified to construct, launch and operate satellite systems. And then it should be prepared to apply its licensing criteria, and to make decisions – perhaps difficult decisions – among the remaining applicants.

As indicated in the *Hughes Comments*, it is likely that applicants faced with an imminent Commission decision will find ways to settle among themselves, and to work out sharing arrangements.[24] When an application is received the Commission should promptly establish a filing window and pleading cycle, and set a deadline of 60-90 days after the close of the pleading cycle for parties to negotiate a mutually agreeable solution. And if the parties are unable to come to a settlement, the Commission should be prepared to make decisions among them. SES AMERICOM is convinced that faced with

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[24] *Hughes Comments* at 48.

an imminent and potentially unpleasant result, the parties will be highly motivated to resolve their issues without undue delay.

F. The Commission Should Reject Teledesic's Approach to Anti-Trafficking Rules, Financial Qualifications and Construction Milestones.

Teledesic takes aim at a number of Commission rules that discourage frivolous, speculative and abusive applications. It may be that the antitrafficking rules could be *improved*, as Teledesic argues.[25] Yet its conclusion – that because the antitrafficking rules are not perfect, they should be abolished – simply does not make sense.[26] As Hughes stated in its comments, antitrafficking rules serve an important purpose *ex ante*, as they make it difficult to profit from the resale of a bare license, and thereby discourage ill-conceived applicants, speculators and greenmailers.[27]

Likewise the Commission's baseline financial qualification requirements serve the important purpose of ensuring that an applicant has the wherewithal to design, construct, launch and operate a satellite.[28] Rather than eliminate them, the Commission should apply them.

Nor should the Commission replace construction milestones with mandatory expenditures. Teledesic's observation that "all contracts have contingencies" misses the mark. A "non-contingent contract" is not a difficult concept, and is a term that

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[25] *Teledesic Comments* at 36.

[26] *Id.* at 35-38.

[27] *Hughes Comments* at 49-50.

[28] *Cf. Teledesic Comments* at 41-42.

has been clearly defined by the Commission multiple times.[29] Mandatory expenditures would cause commercial difficulty in operators' dealings with manufacturers; by requiring payment regardless of circumstances, it would remove a point of leverage that operators must hold. Additionally, Teledesic's suggestion that the Commission develop unique milestones "in the license conditions it adopts for each license," is simply unworkable. It would introduce uncertainty into the process. And even if the Commission were able to avoid favoritism and dissimilar treatment, this case by-case process would leave the resulting determinations open to challenge and litigation.

II. INTELSAT'S "MODIFIED" FIRST-COME PROPOSAL IS FLAWED, AS ARE ITS OTHER SUGGESTIONS.

Intelsat correctly recognizes that the first-come, first-served approach set forth in the Notice is fatally flawed, and indeed that it "could actually slow and prolong satellite licensing."[30] Intelsat proposes a somewhat modified version of that first-come approach that would apply only in "established" services, and would also feature some tweaks around the edges. Unfortunately, Intelsat's "modified" proposal would be susceptible to many of the same problems inherent in the first-come, first-served approach proposed by Teledesic. Moreover, some of Intelsat's proposed modifications would create additional problems that would be worse than the problems they are intended to cure.

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[29] *See e.g.,* PanAmSat Licensee Corp., Application for Authority to Construct, Launch and Operate a Ka-Band Communications Satellite System in the Fixed-Satellite Service at Orbital Locations 58° W.L. and 125° W.L., *Memorandum Opinion and Order*, 15 FCC Rcd 18720 (Int'l Bur. 200), *aff'd* 16 FCC Rcd 11534 (2001).

[30] *Intelsat Comments* at 6.

A. First-Come Licensing in "Established" Services is No Better Than Anywhere Else.

Intelsat proposes applying a first-come licensing scheme only in "established" services (which it defines to include geosynchronous orbit fixed-satellite service in the C-, Ku- and Ka-bands), and in bands not shared by band-segmentation (other than mobile satellite service bands). But nothing about "established" services renders first-come, first-served licensing more appropriate.

As an initial matter, first-come, first-served presents the same legal problems in "established" services as it does in new services. As Hughes points out, the Commission cannot simply refuse to consider mutually exclusive applications, regardless of the type of service involved.[31]

Moreover, first-come, first-served presents the same sort of opportunities for gamesmanship and speculation in established services as it does in new services. Intelsat and others recognize the tremendous opportunity for gamesmanship that would be created by a first-come licensing approach.[32] Competitors or third-party greenmailers would find it easy to block legitimate applications, so that *bona fide* operators might find it necessary to file protective applications. The resulting applications and counter-applications would clog the various queues and create chaos in the Commission's administrative processes. Yet Intelsat does not suggest any distinction between established and other services that would lead one to conclude that those problems would not arise equally in established services. Nor does any such distinction exist. Indeed, first-come, first-served in any service would lead to speculation and gamesmanship.

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[31] *Hughes Comments at 14.*

[32] *Intelsat Comments at 10*; see also *Hughes' Comments at 27.*

Intelsat proposes that the Commission determine whether a band is "established," and therefore a candidate for first-come processing, by determining whether there are service rules and allocations in place for that band.[33] As a practical matter, this means that virtually every satellite band through 50 GHz would be subject to first-come, first-served.[34] More fundamentally, it ignores the fact that a number of bands exist that are not commercially established in any real sense and still are subject to regulatory flux.

Certainly, the "conventional" C-band (3.7-4.2 GHz, 5.95-6.45 GHz) and the "conventional" Ku-band (11.7-12.2 GHz, 14.0-14.5 GHz) are commercially mature. But that hardly can be said for the rest of the C- and Ku-band frequencies; the so-called "extended" bands, which are adjacent to the "conventional" bands, are by no means commercially established in the U.S. for FSS use. Nor can that be said for the V-band frequencies that are listed in the Part 25 service rules as available for licensing, but are still subject to a number of ongoing rulemaking proceedings. Indeed, the fallacy of relying on the existence of service rules to determine whether a band is established is highlighted by the fact that the Part 25 service rules, which permit the licensing of GSO FSS Ka-band spacecraft, have been in place for many years. Yet no one would seriously argue that the Ka-band was "established" when the first Ka-band processing round commenced in 1995.

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[33] *Intelsat Comments at 9.*

[34] See 25 CFR § 25.202 (listing frequency bands to which Part 25 service rules apply).

In short, there is no good reason to apply first-come, first-served to "established" services, or any other services.

B. A $10 Million Bond Would Pose a Prohibitive Barrier to Entry.

Intelsat recognizes the inherent propensity of first-come, first-served, to result in gamesmanship and speculation. Indeed it would be all too easy for "unscrupulous entities to profit from process or to 'greenmail' legitimate operators."[35] But Intelsat's proposed "solution" would merely create another problem.

Intelsat proposes that applicants must execute a $10 million bond, payable to the U.S. Treasury, if a licensee does not meet its construction milestone.[36] This proposal would impose a substantial burden on satellite applicants, and would work to the particular detriment of new entrants. Moreover, the financial burden would come at a particularly difficult time in the life-cycle of a satellite, adding to the already substantial pre-launch costs, at a time when there is no revenue to offset those costs.

Likewise the risk of default could lead to socially inefficient behavior. There may be good reasons for an operator to decide, after it receives a license, not to construct. An operator might believe that consumers or businesses want a particular product or service, only to find a year or two later that they do not. Or it might encounter problems in the capital markets, or unforeseen technical difficulties. To forfeit a $10 million bond under such circumstances, when an applicant is proceeding in good faith,

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[35] *Intelsat Comments* at *10.*

[36] *Id.* at 16. Intelsat favors its "modified FCFS" proposal only if adopted as a complete package. *Id.* at 3.

would represent a penalty and be wasteful. Moreover, the prospect of having to pay a $10 million non-construction penalty would at the margins tend to discourage the development of innovative new services, as it is such services that carry a greater risk of non-completion (and thus of having to pay the $10 million penalty). The $10 million bond requirement would impose a significant cost on, and impediment to, new construction even to well-established incumbents; it would likely be fatal to new entrants.

C. Partial Fungibility Would Wreak Havoc.

An essential element of Intelsat's first-come, first-served proposal is that the second-in-line applicant for one slot may switch lines and become first in the queue for another slot under a number of circumstances.[37] This could lead to a bizarre and chaotic scramble that would throw the entire process into disarray and create a regulatory quagmire. The former applicant who is "first" in the second queue would become "second" in that queue. In order to move to the head of another queue, the displaced applicant could switch lines to become first in a third queue. In other words, the proposal could create a chain reaction that would throw satellite licensing into a permanent state of flux.

D. Cost-Based Transfers of Pending Applications Should Not Be Permitted.

Intelsat also proposes that the Commission allow satellite applicants to sell their place in line, as long as they are not paid more than their "out of pocket costs" of prosecuting their applications. SES AMERICOM opposes this proposal because it would facilitate speculation in satellite applications and greenmail by opportunistic applicants.

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[37] *Id.* at 15-17.

The Commission has rightly noted in the *NPRM* that there should continue to be a general prohibition on the transfer of spots in a processing round (or queue).[38] SES AMERICOM believes that exceptions warranted in the case of a legitimate sale of an existing business can be accommodated under existing Commission precedent.

E. "Deemed Granted" Procedures Should Not be Adopted in the Case of Contested Applications.

Intelsat proposes a procedure whereby certain applications would be "deemed granted" 30 days after Public Notice unless "the FCC notifies the applicant that additional time is required to evaluate the application."[39] Under Intelsat's proposal, an application would be granted through staff inaction even in the face of a pending petition to deny or other opposition that raises legitimate issues.

SES AMERICOM has no objection in principle to a "deemed granted" concept in the case of an uncontested application. But this concept should not be extended to contested proceedings. Any process that results in a contested application being "deemed granted" before the Commission makes an affirmative finding that there are "no substantial and material questions of fact," and before the Commission addresses the issues raised in the petition, would violate Section 309(d)(2) of the Act.[40]

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[38] *NPRM* at ¶ 53.

[39] *Intelsat Comments* at 22.

[40] 47 U.S.C. § 309(d)(2).

F. The Commission Should Retain its Requirement for C-Band Linear Polarization.

The Commission should reject Intelsat's proposal to eliminate the requirement in 47 C.F.R. 25.210(a) that requires C-band satellites to employ orthogonal linear and switchable polarization on a transponder basis. The elimination of this requirement will make C-band coordination extremely difficult, if not impossible.

Intelsat argues that the C-band rule is outdated and no longer needed in an age of digital transmission. Instead, Intelsat recommends that the Commission replace 25.210(a) with a requirement that operators coordinate with adjacent operators. Unfortunately, Intelsat ignores the fact that analog transmissions via C-band satellites, while declining in use, are still prevalent. Without orthogonal polarization, C-band operators cannot be fully confident that transmissions will not be interfered with. Until such time as there are no more analog transmissions, the Commission should maintain the requirements of Section 25.210(a).

III. CTIA'S PROPOSALS SHOULD BE REJECTED.

A. CTIA Ignores Sound Spectrum Management.

CTIA wants the FCC to reallocate satellite spectrum if no one has applied for the spectrum within one year of its initial allocation, and whenever a licensee fails to meet its construction milestones.[41] This suggestion flies in the face of sound spectrum management. The fact that spectrum may be unused does not mean that it will not be used, or that it should be reallocated to a different service.

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[41] *CTIA Comments* at 8.

CTIA's proposal ignores the distinction between satellite and terrestrial services, and the concept of sound spectrum management. Spectrum must continue to be set aside for future satellite use even through terrestrial operators would like access to that spectrum. Deployment of satellite technology in a given frequency band has historically trailed behind terrestrial operation in that band because of the long lead time required to develop space-qualified hardware. If a cellular operator discovers that it has not designed a network "quite right", it can send out work crews and retrofit existing base stations with new equipment using the same spectrum. It is impossible to do the same with space stations in orbit 22,300 miles above the earth.

The public interest clearly is served by ensuring that satellite spectrum remains available when new technologies and business models present themselves. For example, the Ka-band was domestically allocated for the FSS in 1973 in order to address concerns that insufficient spectrum would be available at C-band to accommodate satellite operations.[42] The need for Ka-band spectrum for satellites is highlighted by the congestion that currently exists at C- and Ku-band. The fact that thirty years will have passed between the domestic allocation of this band and the launch of any Ka-band spacecraft is by no means a failure of the Commission's policies.

The Commission's Table of Frequency Allocations reflects long-term spectrum planning that should not be altered because some operators have tried and failed to provide service. If this were the standard, the Ku-band would have been reallocated to

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[42] *See* Establishment of Domestic Communication-Satellite Facilities by Non-Government Entities, *Further Notice of Inquiry and Proposed Rulemakings* 25 FCC 2d 718 (1970); Amendment of Part 2 of the Commission's Rules to Conform with Space WARC 1971, *Report and Order* 39 FCC 2d 959 (1973).

the terrestrial fixed service in the mid-to-late 1980's after most (if not all) of the first round Ku-band GSO FSS applicants failed to implement their licensed systems. And the Ku-band VSAT networks that countless businesses, governments, and consumers rely on every day never would have had a chance to develop.

Moreover, CTIA's suggestion that the Commission not consider accepting satellite applications until it has promulgated specific service rules runs against the nature of satellite technology. Unlike cellular systems, which run on standard designs and off-the-shelf equipment, satellites are for the most part custom designed, and their operations tend to be unique. Service rules established in a vacuum, and without the benefit of corporate technical proposals before the Commission, would likely invite so many requests for waivers and forbearance that the rules themselves would have little import.

B. CTIA's Milestone Suggestions are Unworkable.

SES AMERICOM agrees with CTIA that milestones are essential to make sure that spectrum is being used efficiently.[43] Rather than the suggestions offered by CTIA, SES AMERICOM believes that better enforcement by the Commission of existing milestones would go a long way to achieving the shared goal.[44]

CTIA's suggestions are unworkable and should be rejected. The construction of satellites is an extremely complicated process – much more so than building a wireless terrestrial network. Construction often stops for technical reasons that cannot be anticipated, and thus keeping to a strict schedule is often impossible. The

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[43] *Id.* at 5-6.

[44] *See SIA Comments* at 30-32.

actual construction techniques and specific design elements are very much proprietary to the satellite's manufacturer and owner, and are not information which can be publicly released without causing serious damage to confidential business interests. In addition, reducing the 12-month milestone for a non-contingent contract to nine months reduces an operator's flexibility and does not take into account the need to mesh satellite design with business plans.

Requiring Commission employees to review construction documents and make on-site inspections is a seriously flawed proposal. At a time when Commission resources are stretched thin (particularly on the engineering front), the proposal is simply unrealistic. It would cost significant amounts to implement and result in further delays in the process. Furthermore, the Commission's objective is to streamline its processes, rather than complicating them as this proposal would do.

Similarly, the Commission should reject CTIA's proposal that the Commission require that licensees spend a certain percentage of the projected cost of the satellite each year. As noted above, there are many reasons that satellite construction does not proceed on an even, linear path and the schedule of payments to the manufacturer may vary widely. In addition, satellite operators need flexibility to allocate resources among different projects during the long construction period. As long as the satellite is started and completed as required, the Commission should not care at what rate construction proceeds.

IV. THE COMMISSION SHOULD FURTHER CLARIFY ITS REPLACEMENT EXPECTANCY POLICY.

SES AMERICOM supports the comments filed by PanAmSat regarding improving and clarifying the Commission's replacement expectancy policy[45] and urges the Commission to adopt PanAmSat's suggestions. Replacement expectancy is key to every satellite operator's business plan. But it is a reality that replacement satellites are not identical to those currently in orbit. The technology is constantly advancing and improving. Clarifying the replacement expectancy policy to take technology into account will encourage investment and innovation in replacement satellites, as PanAmSat notes.[46]

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[45] *PanAmSat Comments* at 13-15.

[46] *Id.* at 15.

V. CONCLUSION

Thus, for the reasons stated above, the Commission should not adopt a first-come, first-served satellite licensing procedure for any satellite service, nor should it adopt CTIA's spectrum allocation or milestone proposals. The Commission should adopt PanAmSat's suggestions regarding replacement expectancy.

Respectfully submitted,

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I hereby certify that a copy of the foregoing REPLY COMMENTS was served this 2nd day of July, 2002, by first-class mail, postage prepaid upon (*indicates service also by e-mail):

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