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August 23, 2002

By Hand

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: SES AMERICOM, Inc., Petition for Declaratory Ruling  
SAT-PDR-20020425-00071

Dear Ms. Dortch:

The undersigned today sent the enclosed ex parte communication to Donald Abelson of the FCC's International Bureau. Please associate this communication with the above-referenced file.

Respectfully submitted,

Phillip L. Spector

Enclosure

cc: Mr. Donald Abelson

RECEIVED

AUG 23 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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August 23, 2002

BY HAND

Mr. Donald Abelson  
Chief, International Bureau  
Federal Communications Commission  
445 - 12th St., S.W.  
Washington, DC 20554

Re: SES AMERICOM, Inc., Petition for Declaratory Ruling  
SAT-PDR-20020425-00071

Dear Mr. Abelson:

On behalf of SES AMERICOM, Inc. ("SES AMERICOM"), we write to bring to your attention the refusal to date by EchoStar Communications Corporation ("EchoStar") and DIRECTV, Inc. ("DIRECTV"), to meet with SES AMERICOM in order to commence coordination discussions pursuant to the Radio Regulations of the International Telecommunication Union ("ITU"). The coordination is related to the proposed satellite that is the subject of the above-captioned Petition for Declaratory Ruling (the "PDR").<sup>1</sup> We believe that these incumbent direct broadcast satellite ("DBS") companies' refusal to meet with SES AMERICOM is counter to the rules and policies of the ITU and the FCC. Accordingly, we hereby request your assistance in bringing these incumbent operators to the negotiation table.

<sup>1</sup> *SES AMERICOM, Inc., Petition for Declaratory Ruling To Serve the U.S. Market Using BSS Spectrum from the 105.5° W.L. Orbital Location, SAT-PDR-20020425-00071 (filed April 25, 2002).* ITU coordination is an ongoing process that is pursued separately from the FCC's consideration of any applications, or in this case, the PDR; however, for completeness, we are providing background information herein on the SES AMERICOM PDR.

1. SES AMERICOM Petition

SES AMERICOM filed the PDR with the FCC some four months ago, on April 25, 2002. The PDR detailed SES AMERICOM's plans to establish an open DBS platform on which customers of SES AMERICOM will be able to lease capacity to be used to offer television programming directly to consumers. The venture, known as "AMERICOM2Home," will use a satellite licensed by the Government of Gibraltar, with which SES AMERICOM has had a longstanding relationship on satellite regulatory and licensing matters.<sup>2</sup> The new satellite, on which SES AMERICOM hopes to complete construction by 2004, will be placed at the 105.5° W.L. orbital location, which is in-between the 101° W.L. and 110° W.L. orbital positions occupied by DIRECTV's and EchoStar's DBS satellites.

In the PDR, SES AMERICOM underscored the public interest benefits of its proposed satellite platform. As SES AMERICOM explained, the AMERICOM2Home system will compete with the DBS offerings of EchoStar and DIRECTV, as well as with other multichannel video programming distribution operators, by providing an attractive alternative distribution outlet for content providers. Niche, foreign language, and special interest programmers, for example, who may have trouble obtaining carriage by the incumbent DBS and cable providers, will be able to offer free-to-air, monthly subscription, and/or pay-per-view television programming directly to consumers who have installed a small satellite dish and other necessary receiving equipment.

2. Invitations/ Refusal to Conduct Technical Discussions

The FCC placed SES AMERICOM's PDR on public notice on May 17, 2002, requesting interested parties to file comments on the PDR by June 17, 2002.<sup>3</sup> Starting well in advance of this deadline, SES AMERICOM made offers to have its engineers meet with those of EchoStar and DIRECTV, in order to allow SES AMERICOM to address, on a preliminary basis, any interference or other concerns that the incumbent DBS duopoly providers might have with the AMERICOM2Home proposal.

In one letter, the undersigned, on behalf of SES AMERICOM, explained that "such dialog would be in the public interest because--if the discussions are held prior to the June 17 date for the filing of comments on the Petition -- your better understanding of the AMERICOM2Home proposal should lead to better, more

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<sup>2</sup> The filing at the International Telecommunications Union ("ITU") with respect to this satellite was made by the United Kingdom, which handles ITU matters for Gibraltar.

<sup>3</sup> Public Notice, Report No. SAT-00110, May 17, 2002.

informed comments that will ultimately be of more utility to the FCC.”<sup>4</sup> Despite this letter, as well as repeated attempts by e-mail and telephone to arrange meetings before the date for filing FCC comments, EchoStar and DIRECTV refused to meet with SES AMERICOM.

3. Comments/Oppositions and Reply

Numerous parties filed comments at the FCC on June 17, 2002, in support of SES AMERICOM’s proposal to offer an open DBS platform in the United States. Only two parties expressed substantial opposition to the AMERICOM2Home proposal: EchoStar and DIRECTV. While touting the PDR as evidence of the potential for competition in the DBS arena after their proposed merger, and thus a reason to approve the merger, these DBS incumbents nevertheless urged the FCC to deny the PDR outright, based on purported interference concerns.

SES AMERICOM filed detailed reply comments with the FCC on July 3, 2002, countering each of the negative allegations made by EchoStar and DIRECTV in their comments and opposition. Squarely taking on the interference claims of its detractors, SES AMERICOM established in its reply comments that, assuming good faith coordination efforts by EchoStar and DIRECTV, the AMERICOM2Home platform can coexist with the current and future DBS satellites of the incumbents. The PDR and related filings are currently under review at the FCC.

4. Further Invitations/Refusal to Conduct Operator-Operator Coordination

In a letter dated May 7, 2002, the Radiocommunications Agency of the United Kingdom (the “UK RA”)<sup>5</sup> proposed to the FCC that the coordination process among the AMERICOM2Home system and the affected U.S. systems (EchoStar and DIRECTV) be “carried out on an operator to operator basis.”<sup>6</sup> By letter dated June 28, 2002, the FCC replied, indicating that the U.S. “accepts your proposal to permit operator-to-operator negotiations.”<sup>7</sup> The FCC’s letter went on to designate EchoStar and DIRECTV to represent the United States in operator-to-operator coordination discussions with SES AMERICOM.<sup>8</sup> Pursuant to this letter, SES AMERICOM, on

<sup>4</sup> Letter from Phillip L. Spector, Attorney for SES AMERICOM, to Gary Epstein, Attorney for DIRECTV, and Pantelis Michalopoulos, Attorney for EchoStar (June 7, 2002).

<sup>5</sup> The United Kingdom handles ITU matters for Gibraltar. See note 2 *supra*.

<sup>6</sup> Letter from Pat Strachan, UK RA, to Thomas Tycz, FCC (May 7, 2002).

<sup>7</sup> Letter from Kathryn O’Brien, FCC, to Pat Strachan, UK RA (June 28, 2002).

<sup>8</sup> Id.

July 12, 2002, again invited EchoStar and DIRECTV to meet to begin the operator-to-operator discussions.<sup>9</sup>

These efforts by SES AMERICOM were to no avail, as each DBS incumbent again declined in similar fashion, and on the same date, to have such discussions. EchoStar insisted that any coordination meeting would have to be attended by the FCC and include consideration of the use by SES AMERICOM of an alternative orbital slot and frequencies,<sup>10</sup> while DIRECTV simply refused to meet with SES AMERICOM, indicating instead that it would air its concerns with the FCC.<sup>11</sup> In follow-up conversations on the subject, these incumbents (through their attorneys) have stuck adamantly to their position.

Recently, by letter dated August 7, 2002, the UK RA indicated its concern regarding the DBS incumbents' refusal to meet with SES AMERICOM. Noting its preference for "operator to operator discussions," the UK agency wrote to the Commission that, in light of the "reservations" about such discussions expressed by EchoStar and DIRECTV, the UK Administration is willing to convene "a special administration to administration meeting . . . as soon as possible."<sup>12</sup> We presume that the Commission will shortly be responding to this UK proposal.<sup>13</sup>

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<sup>9</sup> E-mail from Phillip Spector, Attorney for SES AMERICOM, to James Barker, Attorney for DIRECTV, and Pantelis Michalopoulos, Attorney for EchoStar (July 12, 2002).

<sup>10</sup> E-mail from Pantelis Michalopoulos, Attorney for EchoStar, to Phillip Spector, Attorney for SES AMERICOM (July 18, 2002).

<sup>11</sup> E-mail from James Barker, Attorney for DIRECTV, to Phillip Spector, Attorney for SES AMERICOM (July 18, 2002).

<sup>12</sup> Letter from Pat Strachan, UK RA, to Thomas Tycz, FCC (August 7, 2002).

<sup>13</sup> Even if the Commission responds affirmatively and an administration-to-administration meeting is scheduled, such a meeting is not, in SES AMERICOM's view, a substitute for the necessary operator-to-operator discussions. The latter discussions would involve just the three directly affected parties, would not consume scarce FCC and UK RA resources, and should be far easier to schedule (no trans-Atlantic travel is involved). Such discussions are far more likely to lead to a resolution that is satisfactory to the incumbents and that allows a new DBS competitor to emerge. Thus, regardless of how the Commission responds to the UK RA's August 7 letter, the Commission should instruct the DBS incumbents to enter into operator-to-operator discussions with SES AMERICOM. In addition, with respect to both operator-to-operator and administration-to-administration meetings, the Commission should establish hard deadlines, in order to ensure that EchoStar and DIRECTV do not exploit scheduling or other difficulties as a way of delaying such meetings.

5. Implications of Incumbents' Refusal to Meet

The continuing refusal by the incumbent DBS providers to commence meaningful intersystem coordination and other technical discussions with SES AMERICOM is not only anticompetitive, but also contrary to FCC policy. Such coordination discussions are required by ITU rules, and are entirely distinct from the FCC's consideration of the merits of the PDR. Indeed, by authorizing "operator-to-operator negotiations as a means of developing a coordination agreement between [the U.S and the U.K.] administrations,"<sup>14</sup> the FCC has embraced this well-established process to resolve the technical issues raised by the incumbent DBS duopoly.

Because such discussions are a critical step in the deployment of a new system, EchoStar's and DIRECTV's refusal to enter into such discussions at this point can be motivated only by a desire to stall the advent of the competing AMERICOM2Home system. There is no other way to explain why these incumbents would ask the FCC to deny a potential competitor's request for market entry, prior to any technical discussions or studies with the potential new entrant.

SES AMERICOM urges the FCC to take steps to require that EchoStar and DIRECTV comply with the FCC's and ITU's rules and policies, by meeting with SES AMERICOM to commence coordination discussions. The public interest benefits from requiring such discussions are compelling, as coordination will benefit all parties involved. If required to work with SES AMERICOM to coordinate its proposed new satellite, the incumbent DBS providers will be able to air their interference concerns in a forum where satellite operators regularly address such issues. Moreover, such coordination discussions will hasten the launch of a new DBS system that will compete with the services offered by the existing DBS providers, to the benefit of the public.

Accordingly, instead of allowing EchoStar and DIRECTV to continue to delay the coordination process mandated by ITU and FCC rules and policies, we ask that the International Bureau immediately direct these DBS providers to promptly hold coordination discussions in good faith with SES AMERICOM. Without a strong message from the FCC on this matter -- informing the incumbents unambiguously that the aforementioned delays are unacceptable -- we believe that EchoStar and DIRECTV will continue to use the coordination process in an effort to delay progress and impede market entry of an alternative service.

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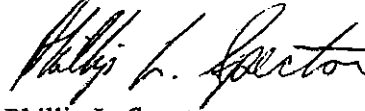
<sup>14</sup> O'Brien Letter, *supra* note 7.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON  
Mr. Donald Abelson

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My client and I will shortly be contacting your office, to seek meetings  
with you and your colleagues to discuss these matters further.

Respectfully submitted,



Phillip L. Spector  
Attorney for SES AMERICOM, Inc.

cc: James Barker, Esq.  
Attorney for DIRECTV

Pantelis Michalopoulos, Esq.  
Attorney for EchoStar

**Certificate of Service**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of September, 2002, a true and correct copy of the foregoing Ex Parte Comments (Redacted) of the National Rural Telecommunications Cooperative was served by hand delivery upon the following:

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street, S.W., Room 8-B201  
Washington, D.C. 20554

The Honorable Michael J. Copps  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W., Room 8-B115  
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy  
Commissioner  
Federal Communications Commission  
445 12th Street, S.W., Room 8-A302  
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The Honorable Kevin J. Martin  
Commissioner  
Federal Communications Commission  
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