

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Petition for Rulemaking to Redesignate the ) RM No. 10767  
28.6-29.1 GHz (Earth-to-space) and )  
18.8-19.3 GHz (space-to-Earth) Bands to )  
Allow Geostationary Fixed-Satellite Service )  
Operations on a Co-Primary Basis )

**COMMENTS OF SES AMERICOM, INC.**

SES AMERICOM, Inc. (“SES AMERICOM”) hereby comments on the above-captioned Petition for Rulemaking submitted by EchoStar Satellite Corporation (“EchoStar”), filed Aug. 27, 2003 (the “Petition”). The Petition seeks initiation of a rulemaking to redesignate the 28.6-29.1 GHz and 18.8-19.3 GHz bands for co-primary operations by both geostationary (“GSO”) and non-geostationary (“NGSO”) systems. SES AMERICOM strongly supports the proposed redesignation, which will permit efficient use of the spectrum and therefore serve the public interest.

The Petition notes that current domestic allocation rules provide for exclusive NGSO use of the 18.8-19.3 GHz downlink band and make GSO use of the 28.6-29.1 GHz uplink bands secondary to NGSO operations. Petition at 1-2. However, EchoStar observes that Teledesic, the only party granted a license for a Ka-band NGSO system, has relinquished its authorization. *Id.* at 9. Other applicants for Ka-band NGSO constellations have withdrawn their applications,

and it is unclear whether the remaining applicants are in a position to implement their proposals even if they eventually receive system licenses. *Id.* at 9-10.

Under these circumstances, EchoStar argues that revision of the Commission's rules to permit co-primary GSO operations in these spectrum bands would "increase significantly the chance that the spectrum in question will be put to use in the foreseeable future." *Id.* at 1. Furthermore, the Petition explains that the factors that led the Commission to set aside the spectrum for exclusive NGSO use are either no longer valid or are outweighed by the public interest benefits of expediting deployment of systems using these bands. *Id.* at 11-18.

EchoStar notes that the frequency bands at issue here are allocated internationally on a co-primary basis for both GSO and NGSO systems. As a result, the Petition indicates that no changes in the international rules are required. Instead, the Petition requests a few discrete changes in the domestic allocation rules: removal of Note NG165 to the Table of Allocations, which limits use of the downlink band to NGSO systems; adoption of sharing rules for GSO and NGSO systems based on the similar requirements in other bands; and extension to these bands of the Ka-band FSS technical and blanket licensing rules. *Id.* at 2.

SES AMERICOM urges the Commission to grant EchoStar's Petition and initiate the requested rulemaking. We have long advocated making the spectrum designated for Ka-band NGSO systems available for GSO operations as well. As EchoStar's Petition notes, GE Americom (predecessor of SES AMERICOM) argued for co-primary GSO and NGSO status in the 28.6-29.1 GHz and 18.8-

19.3 GHz bands in the rulemaking proceeding that led to development of the Ka-band spectrum plan.<sup>1</sup> In addition, GE Americom applied for authority to use these bands as part of its own geostationary Ka-band system.<sup>2</sup> GE Americom explained that grant of the requested authority would permit the company to enhance the service quality and increase the capacity of its Ka-band constellation, making services more cost-effective. GE Americom also argued that principles of efficient spectrum management required that any sharing principles developed through ITU procedures for co-frequency GSO and NGSO operations in the Ka-band be applied across the FSS allocation.

The Commission dismissed GE Americom's application without prejudice.<sup>3</sup> The Commission found that under its current rules, a technical showing was needed to demonstrate that the proposed GSO use of the band would not interfere with NGSO operations. The irony, of course, is that no Ka-band NGSO operations have ever been implemented. Meanwhile, SES AMERICOM is finalizing its preparations for the launch of its first Ka-band spacecraft in 2004, but has been denied authority to include the 28.6-29.1 GHz and 18.8-19.3 GHz bands on its spacecraft.

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<sup>1</sup> See Petition at 6 (citing GE Americom's support for co-primary status for GSO FSS operators in the Ka-band rulemaking).

<sup>2</sup> File No. SAT-MOD-19971222-00202.

<sup>3</sup> See GE American Communications, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 14306 (Int'l Bur. 2001).

As the Petition makes clear, it is time for the Commission to revisit the assumptions that led to the exclusive domestic allocation of spectrum to Ka-band NGSO systems. The Commission has been determined not to burden potential NGSO licensees by requiring them to accommodate co-frequency GSO operations. However, even absent a sharing obligation, no NGSO Ka-band proposal has come to fruition or will be implemented in the foreseeable future. The spectrum that has been set aside for NGSO operations has been lying fallow, and customers of Ka-band GSO systems are being denied the benefits that would result from the availability of additional spectrum.

Furthermore, as EchoStar points out, any future NGSO systems will be subject to sharing requirements in any event under the ITU rules. Unlike the Commission's regulations, ITU rules provide for co-primary GSO and NGSO operations in this spectrum, with priority among the systems determined pursuant to the date of filing. Thus, any future U.S.-licensed NGSO system will still be required to coordinate with a GSO system that has date priority under ITU procedures. *See* Petition at 14-15.

In these circumstances, there is no justification for maintaining domestic spectrum allocation rules that have the effect of impeding, rather than promoting, spectrum use. By revising its rules as requested in the Petition, the Commission can accelerate the delivery of enhanced competitive services to both rural and urban customers alike and make broadband services in Ka-band

spectrum more cost-effective. These advantages clearly outweigh any benefits of retaining exclusive spectrum rights for prospective NGSO operations.

For the reasons set forth herein, SES AMERICOM requests that the Commission initiate the rulemaking requested by EchoStar to revise its allocation rules for Ka-band FSS systems.

Respectfully submitted,

**SES AMERICOM, INC.**

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