

TOM
BARTON

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

March 10, 2005

Peter A. Rohrbach
Karis A. Hastings
David L. Martin
Counsel for SES AMERICOM, Inc.
Hogan & Hartson, LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109

RE: Request for Waiver of Application Fees
Associated with Withdrawn V/Ku-Band
Applications
Fee Control No. 9709298210181001

Dear Counsel:

This is in response to the supplemental request dated August 21, 2003 submitted by SES AMERICOM, Inc. ("SES AMERICOM") for a refund of \$765,405 in filing fees. These fees were paid in connection with SES AMERICOM's applications for authority to launch and operate a system of eleven V/Ku-band satellites at nine orbital locations, filed September 25, 1997, in response to the announcement of a processing round in 1997. The Commission held the applications in abeyance pending the resolution of a related rulemaking proceeding and never placed them on public notice.¹

In your letter, you state that Section 1.1113(a) of the Commission's rules requires the requested refund. This rule states in relevant part that "[t]he full amount of any fee will be returned or refunded ... [w]hen the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application." 47 CFR § 1.1113(a)(4). You state that provisions adopted in the Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10,760 (2003) (*First Space Station Licensing Reform Order or Order*) trigger Section 1.1113(a). Specifically, you cite to the rule adopted by the Commission -- and made applicable to certain pending V-band applications -- that an applicant (and its affiliates) can have a total of no more than five pending applications for orbital locations in any satellite service band. You state that this rule change makes it impossible for the Commission to grant the authority for the system proposed by SES AMERICOM, since SES AMERICOM requested authority to construct and launch a system consisting of eleven satellites in nine orbital locations.

¹ SES AMERICOM subsequently filed a letter withdrawing its applications and seeking a refund of its

Thus, you assert that at a minimum SES AMERICOM should receive a refund of \$340,180 in filing fees associated with applications for the four orbital locations that cannot be granted under the Commission's new rule. You claim, in addition, that Commission precedent supports a refund of the full \$765,405 that SES AMERICOM paid in filing fees for all of its applications, since in the past the Commission has granted refunds pursuant to Section 1.1113(a)(4) where new rules have resulted in significant changes to eligibility or construction requirements and/or to the application processing method. You claim that certain other changes in the *First Space Station Licensing Reform Order* – such as new financial qualifications rules that require licensees to post a \$5 million performance bond for each new satellite authorized and milestone requirements that could require forfeiture of the performance bond when the licensee misses the milestone – constitute “radical changes” that would justify a full refund of SES AMERICOM's filing fees.

You also state that equitable considerations provide independent support for a full refund. You argue that the Commission has granted refunds where application processing still had not commenced a number of years after application filing, and that in this case, the delay in processing has made it unrealistic to expect that the satellite system SES AMERICOM proposed could be constructed and launched in time to meet the ITU “bringing into use” deadline necessary to preserve U.S. priority at the orbital assignments SES AMERICOM requested. You also state that the current six-year processing delay calls into serious question whether the Commission has met its obligation under the Administrative Procedure Act (APA) to conclude matters presented to it “within a reasonable time.” You also note that the Commission has found that equitable considerations warrant the refund of filing fees where the amount of the fee paid “bears scant relationship” to the resources actually expended, particularly when an application is withdrawn or dismissed before any significant processing work has begun. You further argue that although making fee refund determinations based on equitable grounds is based on agency discretion, courts may intervene where that discretion is abused, such as where the agency altogether fails to perform the service that the fee was intended to cover. Finally, you claim that in its *First Space Station Licensing Reform Order*, the Commission did not adequately justify its decision to exclude pending V-band applications from the general policy it adopted of refunding application fees when an application is withdrawn prior to being placed on public notice.

Section 1.1113(a)(4) provides that the Commission will issue refunds for application fees “when the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application .” In establishing the fee collection program, the Commission elaborated on the meaning of this provision:

Section 1.1111(a)(4) [the earlier version of Section 1.1113(a)(4)] is intended to apply in those rare instances where the Commission creates a new regulation or policy, or the Congress and President approve a new law or treaty, that would make the grant of a pending application a *legal nullity*. We believe that this rare event would justify the return of an application because the action of a government entity would make the requested action *impossible* without regard to the merits of that application.

Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd. 947, para. 17 (1987) (*1987 Fee Order*) (*emphases added*). See also *Ranger Cellular and Miller Communications, Inc.*, 348 F.3d 1044 (D.C. Cir. 2003), (upholding a Wireless Telecommunications Bureau decision citing this language).

The Commission adopted the *First Space Station Licensing Reform Order* in May 2003 to put in place licensing procedures that would allow faster service to the public, while maintaining adequate safeguards against speculation.² In the *Order*, the Commission adopted two new satellite space station licensing procedures. For new non-geostationary satellite orbit (NGSO) satellite system applications, and for geostationary satellite orbit (GSO) mobile satellite service (MSS) satellite system applications (together, NGSO-like applications), the Commission adopted a modified processing round procedure. Under this approach, the Commission will announce a cut-off date for a processing round, review each application filed in the processing round to determine whether the applicant is qualified to hold a satellite license, and divide the available spectrum equally among the qualified applicants.³

For new GSO satellite applications other than MSS satellite systems (GSO-like applications), the Commission adopted a new first-come, first-served approach, in which applications are placed in a single queue and reviewed in the order in which they are filed.⁴ The *Order* provided that parties that apply for a GSO-like license that is mutually exclusive with a previously filed application in the queue will not be able to request an application fee refund once their application is placed on public notice.⁵ The Commission adopted a rule to allow for the return of satellite license application fees for applicants under the first-come first-served procedure if the applicant voluntarily withdraws its application before it is placed on public notice.⁶

The Commission adopted additional provisions intended to make the satellite application process more efficient, including setting a required bond amount (\$5 million for GSO-like licensees and \$7.5 million for NGSO-like licensees)⁷ and adding additional milestone requirements for all satellite services.⁸ To prevent frivolous or speculative applications, the *Order* limited the number of applications and unbuilt satellite systems that any one applicant can have pending in a frequency band to five GSO orbital locations and one NGSO satellite system.⁹ The Commission decided further to apply certain of its new rules to some already-pending satellite applications, including those in the V-band. In doing so, the Commission found that its action would “not impair the rights an applicant possessed when it filed its application, increase an applicant’s liability for past conduct, or impose new duties on applicants with respect to transactions already completed.”¹⁰ Specifically, the Commission determined that parties with pending V-band

² *First Space Station Licensing Reform Order*, 18 FCC Rcd at 10865, para. 279.

³ *Id.* at 10,782-86, paras. 48-55. See also Public Notice, “International Bureau Invites Applicants to Amend Pending V-Band Applications,” DA 04-234 at 2 (January 29, 2004) (January 29, 2004 PN).

⁴ *First Space Station Licensing Reform Order* at 10,792-10,822, paras. 71-159.

⁵ *Id.* at 10,806, para. 114.

⁶ *Id.* at 10,807, para. 116. See also 47 C.F.R. § 1.1113(d).

⁷ *Id.* at 10,825, para. 168.

⁸ *Id.* at 10,827-10,838, paras. 173-208.

⁹ *Id.* at 10,846-10,849, paras. 226-233. See also 47 C.F.R. § 25.159.

applications, both GSO-like and NGSO-like, were subject to the new performance bond and milestone requirements adopted in the *Order*¹¹ as well as the new rule limiting the number of permissible pending applications and unbuilt satellite systems for a single entity.¹²

The Commission concluded further that the specific application fee refund provision for applicants for space stations under the first-come first-served procedure adopted in the *Order*, which provided for the return of satellite license application fees if the applicant voluntarily withdrew its application before it is placed on public notice, was not applicable to any of the pending V-band GSO-like license requests. The Commission explained that the fee refund provision adopted in the *Order* was intended to "enable an applicant in a first-come, first-served procedure to obtain a fee refund in cases where an earlier-filed application would make it impossible to grant its application," and that none of the pending applications would be considered "pursuant to a first-come, first-served procedure."¹³ The Commission did note that the new fee refund provision did not affect "the Commission's [current] rules by which an applicant may apply for a fee refund."¹⁴

We agree that the rule limiting the number of pending GSO-like applications adopted in the *First Space Station Licensing Reform Order* makes it impossible for the Commission to grant more than five of SES AMERICOM's pending GSO-like applications for orbital locations in any satellite service band and requires the withdrawal of four of SES AMERICOM's pending applications. Under these circumstances, pursuant to section 1.113(a)(4) of our rules, a refund is appropriate for the four withdrawn applications. We do not agree, however, that any of the provisions adopted in the *First Space Station Licensing Reform Order* -- such as new financial qualifications that require licensees to post a \$5 million performance bond for each new satellite authorized and milestone requirements that could require forfeiture of the performance bond if the licensee misses the milestone -- require that we make a full refund of SES AMERICOM's application fees under Section 1.1113(a)(4). You assert that because of these "radical" changes, "the resulting system and associated business plan would bear little resemblance to the authority originally sought by SES AMERICOM." You state that in the past, the Commission has granted refunds pursuant to Section 1.1113(a)(4) in cases in which new rules have resulted in significant changes to eligibility or construction requirements and/or to the application processing method. You argue that a full refund of filing fees paid by SES Americom is similarly required here, given the far-reaching changes in the regulatory scheme that would govern any V-band licenses granted had SES Americom pursued the applications.

The three cases you cite, however, are clearly distinguishable from the circumstances here. Unlike here, in each of the cases you cite, the Commission made a specific determination that the rules changes it made in the proceeding were significant enough to trigger Rule 1.1113(a)(4) with respect to certain pending applications. In the Multipoint Distribution Service (MDS) proceeding, the Commission adopted several rules to streamline the processing of the approximately 20,000 pending MDS

¹¹ *Id.* at 10,866, para. 281.

¹² *Id.*

¹³ *Id.* at 10,866 para. 282.

applications, some of which had been pending for nearly ten years, and to curtail the filing of speculative MDS applications.¹⁵ Originally, the Commission anticipated that "frequencies in MDS would be used primarily for the transmission of business data, video teleconferencing, and other forms of high-speed computer information."¹⁶ In the Order, however, the Commission adopted rules "to eliminate various impediments to the development of wireless cable service ... [which will serve as] a viable alternative to traditional cable offerings."¹⁷ Among other things, the Commission adopted rule changes that affected both pending and future applicants, including disallowing partial and full settlement agreements among MDS applicants; prohibiting MDS applicants from holding any interest, including a corporate interest of less than one percent, in more than one application for the same channel or channels at sites in the same geographic area; and providing that the sale, transfer, [or] assignment. . . of any interest in an MDS application . . . will be prohibited prior to the completion of construction" except under very narrow circumstances.¹⁸ The Commission found that "in view of the numerous rule changes adopted in this proceeding," -- rule changes that sought to facilitate a use for the spectrum that was not originally anticipated -- it would refund application fees to any applicant whose application is withdrawn prior to the issuance of the public notice designating its application for random selection, pursuant to Rule 1.1111(a)(4).¹⁹

In the 220 MHz band proceeding, the Commission specifically found that certain rule changes imposed on a small subset of "special" applicants were significant enough to trigger Rule 1.1111(a)(4). In 1991, the Commission adopted rules to encourage the development of spectrally efficient narrowband technologies in the 220-222 MHz band.²⁰ In the 220 band, thirty of the sixty nationwide channels were set aside for non-commercial users, *i.e.*, licensees who use the channels for their own internal purposes.²¹ The Commission noted that "in contrast to the commercial nationwide authorizations which will be used by the licensees' numerous customers, the non-commercial channels . . . will be used almost exclusively by four licensees."²² The Commission recognized the "special status of the non-commercial nationwide channels,"²³ noting that that non-commercial licensees "do not compete for customers and have no incentive to extend service to users and may in fact have an incentive to apply for a greater amount of spectrum than necessitated by their current demands in anticipation of future growth."²⁴ In order to narrow the non-commercial pool of applicants to only those entities with the greatest interest and demonstrated capability to develop a non-commercial nationwide

¹⁵ Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, *Report and Order*, 8 FCC Rcd. 1444 (1993) (*MDS Report and Order*)

¹⁶ Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, *Notice of Proposed Rulemaking*, 7 FCC Rcd 3266 (1992).

¹⁷ *MDS Report and Order*, 8 FCC Rcd. 1444, 1449, para.18.

¹⁸ *Id.* at 1446-1447, paras. 10-14.

¹⁹ *Id.* at 1449, para.18, n.49.

²⁰ Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Report and Order*, 6 FCC Rcd. 2356 (1991).

²¹ *Id.* at para. 2.

²² Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Memorandum Opinion and Order*, 7 FCC Rcd. 4484, para. 23 (1992) (220 MO&O).

²³ Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Further Notice of Proposed Rulemaking*, 7 FCC Rcd. 898, para. 6 (1992) (220 Further Notice).

communications system,"²⁵ the Commission adopted stricter operating and construction standards.²⁶ The Commission found that these changes "significantly altered the construction and operational requirements applicable to the non-commercial nationwide channels" and "anticipated that certain applicants may be unable to satisfy our licensing prerequisites or may otherwise no longer be interested in applying."²⁷ The Commission interpreted Rule 1.1111(a)(4) to permit refunds for application fees paid by applicants who wanted to withdraw its applications but made clear that "[r]efunds will be given to non-commercial applicants only."²⁸

In the third case you cite, the Commission granted refunds pursuant to Rule 1.1113(a)(4) because the applications themselves were reclassified to a lower-cost fee category. In the Parts 73 and 74 proceeding, the Commission made several changes to streamline radio technical rules, as part of the Commission's 1998 biennial regulatory review.²⁹ Among the changes made was a change to expand the definition of "minor change" in the AM, the reserved frequency noncommercial educational FM (NCE FM), and the FM translator facilities to conform more closely to the commercial FM definition.³⁰ This would allow licensees to make changes that were "fundamentally technical and minor in nature" – such as changing the power, the frequency, or the antenna height or location – as long as the NCE FM and FM translator stations did not abandon their present service areas.³¹ This reclassification meant that the applications would no longer be subject to a number of statutory requirements, including being subject to a 30-day public notice period in which petitions to deny and mutually exclusive applications could be filed.³² With respect to pending applications, the Commission stated that major change applications subject to reclassification would be reclassified automatically as minor changes,³³ and that "[a]pplicants whose applications are so reclassified may seek refund of the difference between fees paid for major and minor

²⁵ 220 *Further Notice* at para. 6.

²⁶ 220 *MO&O*, 7 FCC Rcd 4484 at paras. 23-29. Specifically, the Commission amended the rules to ~~(1) require nationwide non-commercial licensees to construct at least one base station in a minimum of 70 markets within five years rather than ten years of licensing; ... (2) prohibit the transfer or assignment of nationwide non-commercial licenses during the entire first ten-year license term rather than after 40 percent of the licensee's system had been constructed; (3) require non-commercial nationwide applicants to demonstrate an actual presence or long-term business plan that necessitates internal communications capacity in the 70 or more markets identified in the license application; ... [and (4)] provide that non-commercial, nationwide licensees may lease excess capacity on their systems five years after license grant [rather than after 40 percent of the system has been constructed].~~

Id. at paras. 24, 28-29.

²⁷ *Id.* at n. 66.

²⁸ *Id.*

²⁹ 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Part 73 and 74 of the Commission's Rules, *First Report and Order*, 14 FCC Rcd. 5272 (1999).

³⁰ *Id.* at 5272, para. 1.

³¹ *Id.* at 5274, para. 3.

³² *Id.* at para. 3, n. 8.

³³ *Id.* at 5284, para. 20. The Commission noted that the applications would not be automatically reclassified if there were mutually exclusive applications filed prior to the effective date of the *Order* or if ~~... were filed against the applications.~~ Those applications would be processed under existing

change application processing, . . . and will be deemed entitled to such refunds under 47 C.F.R. § 1.1113(a)(4)."³⁴

The circumstances of the MDS, 220 MHz, and the Parts 73 and 74 proceedings can be readily distinguished from the circumstances here. In each of these cases, the Commission specifically found that the changes to the rules were significant enough to trigger Rule 1.1113(a)(4). In contrast, in the First Space Station Licensing Reform Order, the Commission did not find that the rule changes – such as the bond-posting and milestone requirements -- were significant enough to automatically trigger Rule 1.1113(a)(4) with respect to the pending V-band and KA-band applications.³⁵ The Commission suggested that if the pending applications had been subject to the first-come first served procedure where an earlier-filed application would make it impossible to grant its application, then Rule 1.1113(a)(4) would have been applicable.³⁶ In addition, the Commission noted that it would consider fee refunds pursuant to its rules (such as Rule 1.1113(a)(4)) where the individual circumstances make such action appropriate. And indeed, we do find, pursuant to Rule 1.1113(a)(4), that a refund is appropriate for any application that must be withdrawn because of the rule limiting the number of pending GSO-like applications. But in light of the fact that the Commission did not make a specific finding that the changes adopted in the *First Space Station Licensing Reform Order* automatically triggered Rule 1.1113(a)(4), an applicant seeking an application fee refund must make a specific showing that these changes nullify its application. SES Americom did not make this showing here. In the previous cases, the pending applications were rendered a nullity – either because the fundamental vision of how the spectrum was going to be used changed or because the Commission concluded that a special subset of applicants could not meet the new stringent license requirements or because the applications themselves were reclassified. In contrast, the rule changes here do not fundamentally change the nature of how the spectrum will be used, there is no evidence that satellite operators cannot meet the new requirements, and the applicants have not been reclassified for fee purposes. Accordingly, we will not grant a refund for the full \$765,405 that SES AMERICOM has paid in filing fees but will grant a refund of the \$340,180 in filing fees associated with the four orbital location requests that cannot be granted under the Commission's new rules.

We also disagree that equitable considerations provide support for a full refund of the application fees. First, we disagree that the fact that application processing still had not commenced a number of years after the V-band applications were filed entitles SES AMERICOM to a full refund of its application fees. At the time of filing, applicants were well aware that the satellite application process was complicated and lengthy, and that "no applicant had any right to rely on our former procedures for a grant."³⁷ Under

³⁴ *Id.* at para. 20, n. 53. The Commission noted that AM and FM translator applicants with major change applications on file were subject to the temporary freeze that the Commission imposed on the processing of all major change applications in all commercial broadcast and secondary broadcast services while the Commission was transitioning to competitive bidding procedures pursuant to the Balanced Budget Act of 1997. The Commission stated that these applicants could request dismissal of their major change applications and receive a refund pursuant to Rule 1.1113(a)(4) and resubmit minor change applications. *Id.* at para. 20 & para. 20, n. 53. In several instances, the Commission found that the change to competitive bidding procedures triggered the application of Rule 1.1113(a)(4). See, e.g., n. 44, *infra*.

³⁵ See *First Space Station Licensing Reform Order* at para. 282.

³⁶ ~ ~

the satellite licensing procedure that the Commission used before it adopted the *First Space Station Licensing Reform Order*³⁸, satellite license applicants seeking to provide new services in unauthorized bands traditionally had filed their applications before the establishment of an ITU or domestic allocation for the service in the frequency band for which they were seeking authorization and before the Commission had adopted service or sharing rules for that service. This procedure enhanced the United States' ability to demonstrate demand for the spectrum and the Commission's ability to advocate U.S. positions and obtain the ITU satellite frequency allocations sought by applicants. Obtaining the ITU allocation, and then completing the rulemaking proceedings to adopt the domestic allocation and service rules, would often take years. For example, for the V-band spectrum, the ITU adopted the allocation in 2000, and modified it in 2003. Therefore, we do not believe that this factor alone supports the grant of refunds

For similar reasons, we do not agree that the previous procedure for processing of the V-band applications violates the Administrative Procedure Act's mandate that agencies decide matters in a reasonable time.³⁹ As you state, the court found in *Telecommunications Research & Action Center v. FCC (TRAC)*, that "the time agencies take to make decisions must be governed by a rule of reason." (citations omitted).⁴⁰ Because of the complex international negotiations involved, the processes the Commission had in place previously were not unreasonable, and, as stated above, applicants were well aware that the application process was complicated and could take years to complete. The situation here differs greatly from the *TRAC* case, in which the issue was whether the Court of Appeals should order mandamus to compel the Commission to resolve two matters pending before the Commission regarding whether AT&T overcharged ratepayers.⁴¹ The first matter, which had been pending nearly five years, related to whether the rate of return earned by AT&T and the Bell System on interstate and foreign services in 1978 exceeded the lawful maximum rate set by the Commission.⁴² The second matter, pending for nearly two years, concerned whether regulated service ratepayers might have impermissibly contributed to recovery of about \$500 million that Western Electric, AT&T's manufacturing subsidiary, spent developing CPE between 1980 and 1982.⁴³ Unlike here, these matters involved resolving factual matters pertaining to past events and did not involve ongoing international negotiations. ~~At any rate, the court in the *TRAC* case did not order mandamus, in light of the Commission's assurance that it was moving expeditiously on both overcharge claims.~~⁴⁴

³⁸ In the *First Space Station Licensing Reform Order*, the Commission announced that it would no longer accept satellite license applications filed before the ITU adopted a needed frequency allocation for the proposed service. The Commission stated it would return such applications as premature. The Commission also observed that parties can file petitions for rulemaking to amend the Table of Frequency Allocations instead of premature license applications to demonstrate the need for a new frequency allocation. *Id.* at 10809, para. 124.

³⁹ See 5 U.S.C. § 555(b).

⁴⁰ 750 F.2d 70, 80 (D.C. Cir. 1984)

⁴¹ *Id.* at 72.

⁴² *Id.* at 72-73.

⁴³ *Id.* at 72-74.

⁴⁴ *Id.* at 80. The situation here also differs greatly from the situation in a Commission decision you cite, Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order*, 13 FCC Rcd 15,920 (1998) (*Competitive Bidding Order*), in which the Commission refunded filing fees for commercial Broadcast and Instructional Television Fixed Service (ITFS) applications that had been pending up to four years. *Id.* at 15,920. The Commission also stated that it intended to expedite processing of the

We also do not find the fact that the ITU originally imposed a "bringing into use" deadline of November 2003 to maintain the priority of U.S. frequency assignments in the V-band compels us to grant SES AMERICOM a refund. Applicants were aware that such deadlines were standard procedure, and that the U.S. had the ability to extend the deadline. Indeed, in October 2003, the United States requested the ITU to extend the bringing-into-use dates for all V-band filings until April-October 2007.⁴⁵

We also disagree with your assertion that the Commission should refund SES AMERICOM's fees because the amount paid "bears scant relationship" to the resources that the Commission has actually expended. In support of this proposition, you cite a 1994 case, in which OMD granted a substantial refund to Hughes for application fees for construction, launch, and operation of a replacement satellite. Hughes argued that the Commission initially granted virtually identical authorizations for a satellite which was destroyed during its launch because of a malfunction. In the *Hughes* decision,⁴⁶ OMD stated that "[W]e recognize that the fees contained in the Fee Schedule bear scant relationship to the resources required to process the replacement satellite's authorization because much of the processing is insignificantly different from that required for Hughes' initial satellite. [Thus], we will assess the [significantly smaller] fee required ... for a modification of a space station authorization."⁴⁷

As you acknowledge, however, application fees are generally intended to represent the average cost of application processing services rather than individually-determined costs.⁴⁸ See *1987 Fee Order*, para. 13 ("Because the Commission incurs a cost regardless of the final result to the applicant, we proposed to Congress [and Congress agreed] that these fixed processing costs should be recovered in equal amounts from each applicant through fees. We can find no justification in the statute or the legislative history for apportioning fees according to the actual work done on any particular application"). The Commission has subsequently reaffirmed this principle. See *PanAmSat Corp., Memorandum Opinion and Order*, FCC 04-211, 2004 WL 2009303, paras. 5 and 7 (September 9, 2004) and *Lockheed Martin Corp.*, 16 FCC Rcd 12805, 12807, para. 5 (2001). In *PanAmSat*, the Commission reiterated "there is 'no justification in the statute or legislative history for apportioning fees in accordance with

Balanced Budget Act of 1997, which expanded the Commission's competitive bidding authority under Section 309(j) of the Communications Act, by adding provisions governing auctions for broadcast services. The Commission made clear that these changed circumstances were critical in its decision to provide refunds: "We take the extraordinary step of refunding filing fees paid by those applicants not participating in the auction, in recognition of the fact that these applicants might not have filed their applications if they had known the permit would be awarded by competitive bidding." *Id.* at para. 103. As noted previously, in the *First Space Station Licensing Reform Order*, the Commission did not find that such extraordinary circumstances existed for the pending V-band applicants, and indeed specifically found that it would not consider fee refunds for those applicants withdrawing their applications. See 18 FCC Rcd at 10,866, para. 282.

⁴⁵ See Memorandum to Oleg Efremov, Radiocommunication Bureau, ITU from Jeree Payton, International Bureau, FCC (October 31, 2003). The Commission anticipates that the ITU will grant these requests in the near future. See E-mail to Kal Krautkramer, International Bureau, FCC, from Yvon Henri, Radiocommunication Bureau (May 26, 2004).

⁴⁶ See Fee Decisions of the Managing Director Available to the Public, *Public Notice*, "Letter from Marilyn J. McDermott to James F. Rogers" (April 11, 1994), 9 FCC Rcd 2223, 2230-31 (OMD 1994).

⁴⁷ 12 ... 2220

the actual work done on any particular application"⁴⁹ and further stated that "[i]nsofar as language in the cited OMD rulings [including *Hughes*] suggests that fee relief may be based on any reduced processing burdens associated with authorizing a technically comparable replacement satellite, we clarify that consistent with congressional intent and established agency precedent, good cause for fee waiver or deferral requires a showing of compelling and extraordinary circumstances."⁵⁰ Thus, Congress and the Commission have made clear that the existence of "compelling and extraordinary circumstances" -- not the amount of resources expended in an individual case -- should be the touchstone for determining whether a fee refund should be granted.

Moreover, we find the other decisions you cite for support to be inapplicable. In implementing the fee program,⁵¹ the Commission decided not to charge a hearing fee in comparative cases where the sole remaining applicant was immediately grantable, explaining that "the imposition of a \$6,000 charge in cases which require no evidentiary process does appear to be fundamentally unfair."⁵² We disagree that this language could be read to support the proposition that the Commission should refund fees when the amount paid "bears scant relationship" to the resources that the Commission has actually expended. In that decision, the Commission only found that it was equitable not to charge an applicant for a hearing that was no longer necessary in order for the applicant to become a licensee. The decision did not address refunds in cases where the applicant withdrew its application and is completely consistent with Commission decisions that "good cause for fee waiver requires a showing of compelling and extraordinary circumstances." Similarly, we find a 1994 staff decision⁵³ -- in which OMD granted a refund to Sky-Highway Radio Corp. after it withdrew its applications for launch and operational authority for two satellites in its proposed digital audio radio service satellite (DARS) system -- to be unavailing. In that decision, OMD noted that "it was cognizant that the fees submitted bear scant relationship to the resources that the Commission has expended to date on the processing of these applications."⁵⁴ OMD found "good cause" to refund fees it found "unduly excessive" where processing of the launch and operational authority applications would in all likelihood be deferred until the adoption of service rules and where the applicant's construction permit applications were in a preliminary processing stage at the time it withdrew.⁵⁵ *PanAmSat* makes clear, however, that good cause for a fee refund cannot be shown merely by demonstrating that the amount of the fee "bears scant relationship" to the resources expended in an individual case -- rather it is incumbent upon the applicant to demonstrate the existence of "compelling and extraordinary circumstances." SES Americom has not demonstrated the "compelling and extraordinary circumstances" that would justify its exemption from the Commission's

⁴⁹ *PanAmSat Corporation Application for PAS-8B Satellite, Memorandum Opinion and Order*, 2004 WL 2009303, ¶ 7 (September 9, 2004) (*PanAmSat*), citing *Lockheed Martin Corp.*, 16 FCC Rcd. 12805, 12807 ¶5 (2001) and *Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 949 (1987).

⁵⁰ *Id.* at ¶8.

⁵¹ *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Memorandum Opinion and Order*, 3 FCC Rcd 5987 (1988).

⁵² *Id.* at ¶27.

⁵³ See *Fee Decisions of the Managing Director Available to the Public, Public Notice*, "Letter from Marilyn J. McDermett to Lawrence F. Gilberti" (April 11, 1994), 9 FCC Rcd 2223, 2240-41 (OMD 1994).

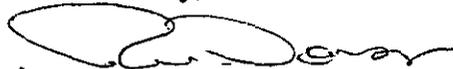
⁵⁴ *Id.* at 2241.

general decision in the *Space Station Licensing Reform Order* not to apply its fee refund provision to any of the pending V-band GSO-like license requests.⁵⁶

Finally, SES AMERICOM's suggestion that its application fees should be refunded because the Commission abused its discretion by "altogether fail[ing] to perform the service that the fee was intended to cover" is completely lacking in merit.⁵⁷ The Commission has clearly expended resources processing the V-band applications. All of the V-band applications underwent a preliminary review. The Commission also filed "advance publications" with the ITU, informing it that U.S. Satellite operators were planning to launch satellites to particular orbit locations. In addition, the Commission provided the ITU with Requests for Coordination, which gives the U.S. applicant priority over applicants from other countries that file their coordination requests after the Commission files its information. Furthermore, the Commission has participated in international coordination activities to protect these filings on an ongoing basis.

In sum, we find that the rule adopted in the *First Space Station Licensing Reform Order* placing limits on pending space station applications applies to SES AMERICOM's pending GSO-like applications for orbit locations and makes it impossible for the Commission to grant more than five of SES AMERICOM's pending applications. You have not demonstrated, however, that this or other provisions adopted by the Commission in the *Order* make it impossible for the Commission to grant authority for SES AMERICOM to operate at five orbital locations. Nor have you demonstrated that equitable considerations provide support for a full refund of fees. Accordingly, we will refund to you as soon as practicable the \$340,180 in filing fees associated with four of SES AMERICOM's nine orbital location requests that cannot be granted under the Commission's new rules. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

⁵⁶ We disagree with your assertion that the Commission did not adequately justify its decision to treat the pending V-band applications completely under the new framework adopted in the *Space Station Licensing Reform Order* with the sole exception of the fee refund provision. SES AMERICOM Request For Refund at p. 7. The Commission clearly explained its decision not to apply the fee refund rule adopted in the *Order* to pending satellite applications: "The fee refund provision adopted in this *Order* is intended to enable an applicant in a first-come, first-served procedure to obtain a fee refund in cases where an earlier-filed application would make it impossible to grant its application. There are no such pending applications here that we would consider pursuant to a first-come, first-served provision." *Space Station Licensing Reform Order*, 18 FCC Rcd. At 10866, ¶ 282 (footnote omitted).

⁵⁷ SES AMERICOM Request For Refund at p. 7 & n.21, citing *Lindy v. United States*, 546 F.2d 371 (Cl. Ct. 1976) and *National Cable Television Association, Inc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976).

97092982/0181001

HOGAN & HARTSON

LLP

KARIS A. HASTINGS
COUNSEL
(202) 637-8767
KAHASTINGS@HHLAW.COM

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1100
TEL (202) 637-8600
FAX (202) 637-8910
WWW.HHLAW.COM

August 21, 2003

BY HAND DELIVERY

Mr. Andrew S. Fishel
Managing Director
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RECEIVED - FCC
AUG 21 2003
Federal Communication Commission
Bureau / Office

① 2dly letter
② Assign to Path
cc: Tom P...
③ folder for 30 of 2
9/25 MR

Re: Request for Refund of Application Fees
Associated with Withdrawn V/Ku-Band Applications
IBFS File Nos. SAT-LOA-19970925-00110/118

Dear Mr. Fishel:

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, hereby supplements its request for a refund of \$765,405 in filing fees associated with the above-referenced applications for authority to launch and operate a system of eleven V/Ku-band satellites at nine orbital locations, filed September 25, 1997, File Nos. SAT-LOA-19970925-00110/118 (the "Applications").¹ The Applications were submitted in response to the announcement of a processing round in 1997. However, the Applications were held in abeyance pending resolution of a related rulemaking proceeding² and were never placed on public notice. SES AMERICOM

¹ The Applications were filed, and the application fees were paid, by GE American Communications, Inc. ("GE Americom"). In 2001, GE Americom was acquired by SES Global S.A., and effective with that change in control, the name of GE Americom was changed to SES AMERICOM, Inc. See Letter from Phillip L. Spector, counsel for SES Global S.A., to Magalie R. Salas, Secretary, Federal Communications Commission, dated Nov. 21, 2001.

² See Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5

RECEIVED DEC 10 2003

HOGAN & HARTSON L.L.P.

Mr. Andrew S. Fishel

August 21, 2003

Page 2

filed a letter withdrawing the Applications and seeking a refund of the filing fees paid on July 16, 2003.³ As explained below, the requested refund is required by the Commission's rules and consistent with its prior precedent.

Section 1.1113(a) of the Commission's rules governs the refund of fees, stating that:

The full amount of any fee submitted will be returned or refunded, as appropriate, under the authority granted at §0.231 . . . (4) When the Commission adopts new rules that nullify applications already accepted for filing, or new law or treaty would render useless a grant or other positive disposition of the application.⁴

In adopting this provision, the Commission elaborated that the rule is intended to apply where the "action of a government entity would make the requested action impossible without regard to the merits of the application."⁵ The instant circumstances justify a refund based on the criteria set out in the rule.

In May of this year, the Commission released its *Space Station Licensing Reform Order*,⁶ which substantially changed the licensing standards and procedures that apply to satellite applications. Among other revisions, the

GHz for Government Operations, *Further Notice of Proposed Rulemaking*, IB Docket No. 97-95, 16 FCC Rcd 12244 (2001).

³ See Letter from Peter A. Rohrbach, Counsel for SES AMERICOM, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, dated July 16, 2003.

⁴ 47 C.F.R. § 1.1113(a)(4).

⁵ Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd 947, 950 (1987) ("*Fee Collection Order*") (the rule was originally adopted as §1.1111(a)(4)).

⁶ Amendment of the Commission's Space Station Licensing Rules and Policies, IB Docket No. 02-34, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-102 (rel. May 19, 2003) ("*Space Station Licensing Reform Order*").

Mr. Andrew S. Fishel

August 21, 2003

Page 3

Commission adopted a new limit on the number of orbital locations in any satellite service band that could be sought by any entity. Specifically, the Commission held that at any one time, an applicant (and its affiliates) could have a total of no more than five pending applications and licensed but unlaunched satellites in any frequency band.⁷ The Commission decided to apply this new restriction to pending V-band applications, even though those applications were filed more than five years prior to adoption of the new limit.⁸

This change alone makes it impossible for the Commission to grant the authority sought by SES AMERICOM. As noted above, SES AMERICOM requested authority to construct and launch a system consisting of eleven satellites in nine orbital locations. Pursuant to the *Space Station Licensing Reform Order*, however, V-band applicants are required to withdraw all but five requests for orbital positions.⁹ Thus, the Commission's action in adopting the new licensing rules clearly "make[s] [SES AMERICOM's] requested action impossible without regard to the merits of the application."¹⁰ SES AMERICOM cannot, consistent with the new limitations imposed by the *Space Station Licensing Reform Order*, be granted the authority for the system it proposed in 1997. Accordingly, a full refund of the associated application fees should be granted pursuant to Section 1.1113(a)(4).

Furthermore, the restriction on the number of orbital locations that can be sought by an applicant is only one of the many fundamental changes adopted in the *Space Station Licensing Reform Order*. As a result of the new policies, even if

⁷ See *Space Station Licensing Reform Order* at ¶ 233; see also new §25.159 (effective date pending).

⁸ See *Space Station Licensing Reform Order* at ¶ 275.

⁹ See *id.* at ¶ 281 ("V-band applicants will be required to withdraw all but five GSO-like orbit location requests and one NGSO-like satellite system request."). Thus, SES AMERICOM had no choice but to withdraw the applications for four of the nine orbital locations it originally requested. Given this explicit withdrawal requirement, at a minimum a refund is mandated under Section 1.1113(a)(4) with respect to the \$340,180 in filing fees associated with those four orbital location requests. However, as discussed herein, Commission precedent supports a refund of the total \$765,405 amount paid as processing fees for the Applications.

¹⁰ *Fee Collection Order* at 950.

HOGAN & HARTSON L.L.P.

Mr. Andrew S. Fishel

August 21, 2009

Page 4

SES AMERICOM had not withdrawn all of the Applications and the Commission eventually granted it authority to operate at five orbital locations, the resulting system and associated business plan would bear little resemblance to the authority originally sought by SES AMERICOM. This is true not only due to the sharply reduced system size, but also due to the other radical changes contained in the *Space Station Licensing Reform Order*. For example, the Commission adopted new financial qualifications that require licensees to post a \$5 million performance bond for each new satellite authorized.¹¹ In addition, the Commission adopted new milestone requirements and stated that it would strictly enforce milestones, revoking licenses and requiring forfeiture of the performance bond any time a milestone is missed without a demonstration that the failure to meet the milestone resulted from circumstances beyond the licensee's control.¹²

In the past, the Commission has granted refunds pursuant to Section 1.1113(a)(4) where new rules have resulted in significant changes to eligibility or construction requirements and/or to the application processing method.¹³ A full refund of the filing fees paid by SES AMERICOM is similarly

¹¹ See *Space Station Licensing Reform Order* at ¶¶ 167-168. In addition to creating a new financial qualification entry requirement, the bond requirement dramatically changes the business risk assessment of any new system.

¹² See *Space Station Licensing Reform Order* at ¶ 6 ("We strengthen our milestone requirements"); ¶ 170 (performance bond will be payable "upon failure to meet any milestone based on circumstances within the licensee's control").

¹³ See, e.g., Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Mobile Radio Services, *Memorandum Opinion and Order*, 7 FCC Rcd 4484 (1992) at n.66 ("Because we are adopting rule changes that significantly alter the construction and operational requirements . . . we anticipate that certain applicants may be unable to satisfy our licensing prerequisites or may no longer be interested in applying"); 1998 Biennial Regulatory Review - Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, *First Report and Order*, 14 FCC Rcd 5272, 5284-85, nn. 51, 53 (1999); Amendment of Parts 1, 2 and 21 of the Commission's Rules Governing the Use of the Frequencies in the 2.1 and 2.5 GHz Bands, *Report and Order*, 8 FCC Rcd 1444 (1993) at ¶ 49 ("if, in view of the numerous rule changes adopted in this proceeding, any applicant whose application is currently pending withdraws prior to

Mr. Andrew S. Fishel

August 21, 2003

Page 5

required here, given the far-reaching changes in the regulatory scheme that would govern any V-band licenses granted had SES AMERICOM pursued the Applications.

Under well-established Commission precedent, equitable considerations provide independent support for a full refund.¹⁴ For example, the Commission has granted refunds where, like here, application processing had still not commenced a number of years after application filing.¹⁵ In this case, the delay in processing has made it unrealistic to expect that the satellite system SES AMERICOM proposed could be constructed and launched in time to meet the ITU "bringing into use" deadline necessary to preserve U.S. priority at the orbital assignments SES AMERICOM requested.¹⁶ Indeed, the current six-year processing delay calls into serious question whether the Commission has met its obligation under the Administrative Procedures Act ("APA") to conclude matters presented to it "within a reasonable time."¹⁷

the issuance of the public notice designating its application for random selection, its application filing fees will be refunded.").

¹⁴ In adopting the refund rule, the Commission recognized that situations not covered by the rule would occur in which refunds should nevertheless be granted based on equitable considerations. *See Fee Collection Order* at ¶ 16 ("We also do not believe that it is necessary to create a specific rule to allow the Commission to act on fee problems as equity requires. Our general statutory authority is broad enough to permit us to act in instances where return of, or credit for, a fee would be warranted.").

¹⁵ *See, e.g., Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, First Report and Order*, 13 FCC Rcd 15920 (1998) at ¶ 101-103 ("This [refund] is appropriate as a matter of fairness because these applications have been pending up to four years or longer.").

¹⁶ This is especially true given that the Commission has still not completed its V-band rulemaking proceeding, meaning that the grant of the first license is still some time away.

¹⁷ 5 U.S.C. § 555(b). *See also* 5 U.S.C. § 706(1) (giving courts the power to "compel agency action unlawfully withheld or unreasonably delayed"); *Telecomm.*

Mr. Andrew S. Fishel

August 21, 2003

Page 6

Recognizing that the purpose of application fees is to reimburse the agency for its application processing costs, the Commission has also found in numerous cases that equitable considerations warrant the refund of filing fees where the amount of the fee paid "bears scant relationship" to the resources actually expended,¹⁸ particularly when an application is withdrawn or dismissed before any significant processing work has begun.¹⁹ In one particularly analogous case, the Commission returned the \$140,000 application fees of Sky-Highway, a satellite DARS applicant that eventually withdrew its application after waiting for the Commission to issue DARS service rules.²⁰

Research & Action v. FCC, 750 F.2d 70 (D.C. Cir. 1984) (explaining that "the time agencies take to make decisions must be governed by a 'rule of reason'").

¹⁸ See, e.g., Fee Decisions of the Managing Director Available to the Public, Public Notice, 9 FCC Rcd 2223, 2230 (OMD 1994) (refunding \$67,000 to Hughes because the fees paid "bear scant relationship to the resources required to process" the application); Letter from Marilyn J. McDermott to James F. Rogers, April 11, 1994 (refunding to Astrolink fees that bore "scant relationship to the resources required to process the application"). See also Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Memorandum Opinion and Order, 3 FCC Rcd 5987 (1988) at ¶ 27 (providing a refund because "the imposition of a \$6,000 charge in cases which require no evidentiary process does appear to be fundamentally unfair"). The Commission has granted such refunds based on equitable considerations ~~notwithstanding the fact that application fees are generally intended to represent the average cost of application processing services rather than individually-~~ determined costs.

¹⁹ See Certain Cellular Rural Service Area Applications, Order, 14 FCC Rcd 4619, 4621 (WTB 1999) at n.14 (explaining that refunds were granted in another proceeding because those applications had been "accepted for filing but not processed further").

²⁰ See Fee Decisions of the Managing Director Available to the Public, Public Notice, 9 FCC Rcd 2223, 2240-41 (OMD 1994) ("[W]e are persuaded that the fees submitted by Sky-Highway for obtaining launch and operational authority are unduly excessive. Any processing of these later applications will in all likelihood be deferred until the adoption of rules governing the DARS service.").

Mr. Andrew S. Fishel

August 21, 2008

Page 7

Although making fee refund determinations based on equitable grounds is devoted to agency discretion, the courts may intervene where that discretion is abused, such as where the agency altogether fails to perform the service that the fee was intended to cover. In *Lindy v. United States*, for example, the court ordered the refund of a Federal Housing Administration ("FHA") inspection fee associated with a loan application after the agency failed to conduct the inspection.²¹ At some point, obviously, an indefinite "holding in abeyance" of applications becomes a failure to perform the service paid for.

As a final equitable consideration, SES AMERICOM notes that the Commission, in its *Space Station Licensing Reform Order*, adopted a policy of refunding application fees if an application was withdrawn prior to it being placed on public notice.²² However, despite the fact that it decided to apply virtually all of the new rules adopted as part of the *Space Station Licensing Reform* proceeding to the pending V-band applications, the Commission stated that the rule authorizing refunds for applications not yet placed on public notice would not extend to V-band applications that are withdrawn.²³ The Commission did not adequately justify its decision to treat the pending V-band applications completely under the new framework adopted in the *Space Station Licensing Reform Order* with the sole exception of the refund provision.

Nevertheless, nothing in the *Space Station Licensing Reform Order* prevents a refund of V-band application fees. Indeed, the order clarifies that the Commission's existing refund rule (i.e., §1.1113) remains unchanged.²⁴ As

²¹ *Lindy v. United States*, 546 F.2d 371, 373 (Ct.Cl. 1976) (finding that the agency's refusal to refund the fee was based "either [on] a legally void reason or for what is evidently no reason whatsoever"). Similarly, in *National Cable Television Association, Inc. v. FCC*, 554 F.2d 1094 (D.C. Cir. 1976), the D.C. Circuit held that the FCC was limited to assessing fees at a rate reasonably reflecting the cost of services performed, and that if the fee unreasonably exceeds the value of specific services for which it is charged, it will be held invalid. Clearly, no fee can be reasonable when no service is performed.

²² See *Space Station Licensing Reform Order* at ¶ 116.

²³ See *id.* at ¶ 282.

²⁴ See *id.* at n.679.

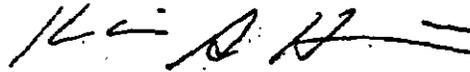
HOGAN & HARTSON, L.L.P.

Mr. Andrew S. Fishel
August 21, 2008
Page 8

demonstrated above, SES AMERICOM's request is grantable based on this rule and Commission precedent alone, without the need to resort to the new refund provisions contained in the order.

Thus, for the reasons explained herein, SES Americom requests that the Commission have a check issued in the amount of \$765,405, made payable to SES AMERICOM, Inc. Copies of the transmittal letter and fee payment check submitted on September 25, 1997, are attached. Please address any questions regarding this request to the undersigned.

Respectfully submitted,



Peter A. Rohrbach
Karis A. Hastings
David L. Martin
Counsel for SES AMERICOM, Inc.

Enclosures

ccs: Thomas S. Tycz
Cassandra Thomas
Fern Jarmulnek
~~Jennifer Gilsonan~~

HOGAN & HARTSON
LLP

FCC/MELLON SEP 25 1997

COLUMBIA SQUARE
555 THIRTEENTH STREET, NW
WASHINGTON, DC 20004-1199
TEL (202) 637-6800
FAX (202) 637-6918

Writer's Direct Dial
(202) 637-6706

September 26, 1997

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
International Bureau, Satellites
P.O. Box 358210
Pittsburgh, PA 15251-8210

Re: Application of GE American Communications, Inc. for
Authority to Launch and Operate the GE*StarPlus V/Ku-
band Fixed Service Satellite System

Dear Mr. Caton:

GE American Communications, Inc. ("GE Americom") hereby encloses for filing an original and nine copies of an application for authority to construct, launch and operate the GE*StarPlus V/Ku-band fixed service communications satellite system. See Public Notice, Extension of Cut-Off Dates for Applications, Letters of Intent, and Amendments to Applications in the 2 GHz and 36-51.4 GHz Frequency Bands (September 4, 1997) (extending filing window until September 26, 1997).

Also enclosed are an original and nine copies of Form 312 and a check made out to the Commission in the amount of \$765,405. This check is for an amount consistent with the nine orbital slots requested for the GE*StarPlus system, although the system intends to operate 11 satellites in all, with two technically identical satellites proposed to operate at two of the nine requested orbital slots. See Public Notice, Filing Fee Waiver Established for Applications Proposing Geosynchronous Space Stations in Response to Report Nos. SPB-88 and SPB-89 (August 26, 1997) (replacing per-satellite filing fee in certain cases with per-orbital slot filing fee).

HOGAN & HARTSON L.L.P.

Mr. William F. Caton
Acting Secretary
September 25, 1997
Page 2

An additional copy of the application and the Form 312 also are enclosed. Please date-stamp it and return it to the undersigned in the enclosed envelope.

If any questions arise in connection with this matter, please contact the undersigned.

Sincerely yours,

GE AMERICAN
COMMUNICATIONS, INC.

By: *J. Miller & R. ...*

Peter A. Rohrbach
Karis A. Hastings
F. William LeBeau

HOGAN & HARTSON L.L.P.
555 18th Street, N.W.
Washington, DC 20004

Its Attorneys

FWL/fwl

Enclosures

cc: Thomas Tycz

Payment Search Detail

Fee Control Number	Payor Name	Payment Amt	Overage Amt	F	Credit Card Info
9709299210181001	GE AMERICAN COMMUNICATI	\$765,405.00	\$0.00		Payor Info
					Card Clerk Info
					Changer Info
					Acct Info
					<input checked="" type="checkbox"/> Also Show JV'd transactions
					How to Unapply
					FCC Code Info
					Applicant Info
					Treasury Info
					Modify Payment
					Close

Sequence	Quantity	Payment Type Code	Payment Amount	Trans Code	CallSign Other Id	Treasury Symbol	F
1	9	BNY	\$765,405.00	PMT		272429	11

Payment Transactions Detail Report

Date: 12/10/2003

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
9709298210181001	GE AMERICAN COMMUNICATIONS INC 4 RESEARCH WAY PRINCETON NJ 08540	FCC2000452		19/25/1997 00:00 00							
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$765,405.00	\$765,405.00	1	BNY	9		GE AMERICAN COMMUNICATIONS INC	08540		\$765,405.00	1	PMT
Total		1							\$765,405.00		