

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

Adama

OFFICE OF  
MANAGING DIRECTOR

May 23, 2006

Robert A. Mazer, Esq.  
R. Edward Price, Esq.  
Scott Woodworth, Esq.  
Vinson & Elkins, L.L.P.  
1455 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-1008

Re: SkyTerra Communications, Inc.  
Request for Waiver of Application Fees  
Fee Control Nos. 0502118210116001 and  
0409168210812001

Dear Counsel:

This is in response to your request dated February 17, 2005 (*Request*), filed on behalf of SkyTerra Communications, Inc. (SkyTerra), for a waiver of the filing fees associated with an application for authority to construct, launch and operate a two-satellite Ka-Band geostationary satellite orbit (GSO) system to be located in a single orbital location and operated in one frequency band.<sup>1</sup> Specifically, SkyTerra requests a waiver to allow payment of the application fees at issue here on a per orbital location basis, as opposed to a per satellite basis, thereby allowing SkyTerra to submit one filing fee instead of two for its proposed two-satellite system.<sup>2</sup> Our records reflect that SkyTerra paid a filing fee of \$102,700.00 for each of the two satellites, for a total fee of \$205,400.00. We reject your request for the reasons stated herein.

You recite that on October 29, 2004, SkyTerra filed an application for authority to construct, launch and operate two co-located geostationary satellites in the Ka-band, along with a filing fee of \$102,700.00. In a letter dated February 3, 2005, the International Bureau (Bureau) dismissed the application without prejudice to refile because SkyTerra had failed to file a Schedule S application and application fee for each

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<sup>1</sup> SkyTerra's proposed system would use the 18.3-18.8 GHz, 19.7-20.2 GHz, 28.35-28.6 GHz, and 29.25-30 GHz frequency band, at the 95 degrees W.L. orbital location. *Request* at 1.

<sup>2</sup> *Id.* at 1-2.

of the proposed satellites.<sup>3</sup> On February 14, 2005 and February 16, 2005, respectively, SkyTerra submitted an application and a \$102,700.00 filing fee for each of the two proposed satellites, for a total fee of \$205,400.00.

First, you assert that neither Section 8(g) of the Communications Act of 1934, as amended, 47 U.S.C. §158(g) (the Act), nor the Commission's rules specifically indicates whether the fee for an initial application for authority to launch and operate a geostationary space station must be paid on a per satellite or per orbital location basis.<sup>4</sup> You maintain that one could reasonably conclude that Congress did not intend the application fee for launch and operation authority to apply on a per satellite basis because otherwise Congress would have so specified in the statute.

Next, you state that on September 28, 1995, the Office of Managing Director (Managing Director) established an interim filing fee payment for applicants for authority to launch and operate fixed Ka-band (17.7-20.2/27.5-30) satellites ("interim filing fee"), based upon the total number of orbital locations that an applicant proposed to occupy rather than on the number of satellites it planned to deploy.<sup>5</sup> You maintain that "[a]lthough the Managing Director characterized the per orbit location fee structure as 'interim,' there is no indication that the Commission has changed this policy."<sup>6</sup> You assert that the Commission continued its "practice" of basing application fees on the number of orbital locations in the context of other GSO systems<sup>7</sup> and that it has required GSO fees to be

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<sup>3</sup> See Letter from Fern J. Jarmulnek, Deputy Chief, International Bureau, FCC, to Robert Lewis at 2 (Feb. 3, 2005) (*citing Amendment of the Commission's Space Station Licensing Rules and Policies, Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 13486 (2003) (*Space Station Third Report and Order*), *Erratum*, 18 FCC Rcd 15306 (2003) (*Space Station Erratum*) and 47 C.F.R. §1.1107).

<sup>4</sup> *Request* at 2 and 4.

<sup>5</sup> See *Public Notice*, Interim Filing Fee Payment Established for Ka-Band Satellite Applications (OMD Sept. 28, 1995) (*September 1995 Public Notice*) (*citing* Letter from Andrew S. Fishel, Office of Managing Director, FCC, to John P. Janka, Esq., counsel for Hughes Communications Galaxy, Inc. (Sept. 28, 1995) (*September 1995 Hughes Letter*)).

<sup>6</sup> *Request* at 4.

<sup>7</sup> *Id.* at 4-5. You cite *Public Notice*, Filing Fee Waiver Established for Applications Proposing Geosynchronous Space Stations in Response to Report Nos. SPB-88 and SPB-89, Cut-Offs Established in the 2 GHz and 36-51.4 GHz Frequency Bands, 1997 WL 525444 (OMD Aug. 26, 1997) (applicants filing geosynchronous space station applications for the 2 GHz and 36-54.1 GHz frequency bands in response to the "cut-off" notices, *i.e.*, no later than September 5, 1997, and who are proposing more than one technically identical space station to be located at a single orbital location may file application fees on a per orbital basis, as opposed to per satellite basis, *citing* grant of request for such a waiver in Letter of Andrew S. Fishel, Managing Director, FCC, to John

paid on a per satellite basis only in the context of an assignment or transfer of control application.

You further assert that because SkyTerra's two-satellite system will enhance the capabilities of the services that SkyTerra provides its customers and ameliorate the risks associated with a single satellite system, it is "counterintuitive" to "penalize" SkyTerra by requiring the payment of "two filing fees to use a single geostationary satellite orbit position."<sup>8</sup> You maintain that a grant of a waiver would be "consistent with the intention of Congress, the courts and the Commission that the application processing fees should bear a reasonable relationship to the Commission's expenses in processing the application."<sup>10</sup> In support, you state that the Court of Appeals for the District of Columbia Circuit has determined that "the agency must in all cases demonstrate a 'necessary, natural, or . . . probable correspondence between the sums to be paid . . . and . . . the character or extent of the services [rendered.]'"<sup>11</sup> Finally, you claim that there is no difference between the analysis required to review the instant application versus an identical application proposing a single satellite system.<sup>12</sup>

We disagree with your primary assertion that the Commission has not made clear the basis for the fee in issue. The Commission's rules require applicants to pay a \$102,700.00 application fee for *each* initial application for authority to launch and operate a geostationary space station.<sup>13</sup> Further, the Commission specifically requires that "applicants seeking more than one GSO-like satellite must file *one application for*

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J. Janka (Aug. 26, 1997) (*Hughes 2 GHz and 36-51.4 GHz Letter*); *Hughes 2 GHz and 36-51.4 GHz Letter*; Letter from Andrew S. Fishel, Managing Director, to Counsel for Lockheed Martin (June 22, 2000) (granting Lockheed Martin Corporation's waiver request so as to allow filing of application fees on a per orbital basis after finding that the application to launch and operate a geostationary satellite system in L-band and C-band frequencies "meet[s] the criteria regarding the filing of applications for technically identical satellites at the same orbital location").

<sup>8</sup> You cite *Lockheed Martin Corp.*, 16 FCC Rcd 12805 (2001) (*Lockheed Martin*). You state that in *Lockheed Martin*, as in other assignment cases where the Commission has required a per satellite filing fee, the fee amounts "were not nearly as great" as the amount at issue here. *Request* at 5.

<sup>9</sup> *Request* at 7.

<sup>10</sup> *Id.*

<sup>11</sup> *See id.* at 7-8, quoting *Nat'l Cable Television Ass'n v. FCC*, 554 F.2d 1094, 1108 (D.C. Cir. 1976) (*NCTA*).

<sup>12</sup> *Request* at 8.

<sup>13</sup> *See* 47 C.F.R. §1.1107(9)(a)(i); *see also* 47 U.S.C. §158(g), Common Carrier Services, (16)(b)(i).

*each satellite.*<sup>14</sup> Therefore, contrary to your assertion, the Commission's rules and satellite licensing procedures specifically require applicants to pay a filing fee for an initial application for authority to launch and operate a geostationary space station on a per satellite basis.<sup>15</sup>

We reject as unfounded your claim that the interim filing fee established in the *September 1995 Public Notice* for applications for authority to launch and operate fixed Ka-band satellites (which, as discussed above, was based on the number of proposed orbital locations) reflects current Commission policy. The Managing Director limited the interim filing fee to applications filed "no later than September 29, 1995."<sup>16</sup> SkyTerra filed its initial application on October 29, 2004 and the applications at issue here in February of 2005, well beyond the September 29, 1995 filing deadline. SkyTerra's applications are therefore not subject to the interim filing fee established in the *September 1995 Public Notice*.

We also reject your assertion that the Commission should permit SkyTerra to file an orbital-based application fee because the Commission has permitted the filing of application fees on an orbital basis in the context of other GSO systems. The fee rulings

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<sup>14</sup> See *Space Station Erratum* at 15306 (emphasis added); see also *id.* ("In addition, . . . we require GSO-like applicants to specify only one orbit location in each application."); 47 C.F.R. §25.114(a) ("A comprehensive proposal shall be submitted for each proposed space station on FCC Form 312, Main Form and Schedule S, together with attached exhibits . . ."); 47 C.F.R. §25.114(b) ("Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation.").

<sup>15</sup> In view of this conclusion, and because you concede that "[t]he Commission . . . appears to have the discretion to establish GSO fee methodology," such as the orbital based interim filing fee established in the *September 1995 Public Notice*, we need not address your speculative contention that Congress intended that the application fee be paid on a per orbital basis because section 8(g) of the Act does not specifically state that the fee must be paid on a per satellite basis. See *Request* at 4. We note, however, the Commission has indicated that under the Section 8 fee schedule geostationary space station applicants pay launch and operation authority fees per satellite. See *Sirius Satellite Radio, Inc.*, 18 FCC Red 12551, 12555, para.12 (2003) (*Sirius Satellite Radio*). Moreover, we note that in Section 8, under the category Space Stations, Application for Authority to Launch and Operate, Congress set forth the identical fee for Initial Application and Replacement Satellite, which suggests Congress intended both fees to be assessed on a per satellite basis. 47 U.S.C. §158, Schedule of Application Fees, Common Carrier Services, 16(b)(i) and (ii).

<sup>16</sup> See *September 1995 Public Notice*; see also *September 1995 Hughes Letter* ("an interim fee payment for Ka-band satellite applications, based upon the total number of orbital locations that an applicant proposes to occupy, should be filed along with underlying applications no later than September 29, 1995").

and public notice that you cite (*see supra* note 7) preceded the Commission's adoption of rules in IB Docket Number 02-34 in 2003 "significantly revamp[ing] the [satellite] licensing process that [the Commission had] . . . used since the early 1980s."<sup>17</sup> In that rulemaking, the Commission adopted licensing procedures requiring applicants to file an application for each proposed GSO-like satellite.<sup>18</sup> As discussed above, each of those applications requires the payment of an application fee.<sup>19</sup> Because the Commission adopted substantial revisions to the satellite licensing process (including the requirement that applicants file one application for each GSO-like satellite) subsequent to the public notice and fee rulings that you cite, and prior to the filing of the applications at issue, we find that those earlier actions provide no basis for granting your request for fee relief.

We also disagree with your assertion that in view of the benefits to be achieved with SkyTerra's proposed two-satellite system, the Commission should not require the payment of two application fees. This reasoning could apply to virtually any new innovative service and, therefore, is not a sufficiently compelling reason to warrant a waiver of the application fees mandated by section 8(g) of the Act.<sup>20</sup>

Finally, we disagree with your contention that a waiver should be granted because there is allegedly no difference between the analysis required to review the instant application and an identical one-satellite system application. It is well established that "there is 'no justification in the statute or legislative history for apportioning fees in accordance with the actual work done on any particular application.'"<sup>21</sup> Thus, Congress and the

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<sup>17</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34*, 18 FCC Rcd 10760, 10762 (2003) (*Space Station First Report and Order*).

<sup>18</sup> *See Space Station Erratum* at 15306; *see also* 47 C.F.R. §25.114(a).

<sup>19</sup> *See* 47 C.F.R. §1.1107(9)(a)(I).

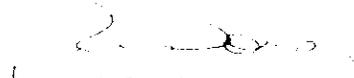
<sup>20</sup> The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby. *See* 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances." *See Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd 947, 958, para. 70 (1987); *Sirius Satellite Radio*, 18 FCC Rcd at 12554, para. 11.

<sup>21</sup> *PanAmSat Corporation*, 19 FCC Rcd 18495, 18498 (2004); *see also id.* at 18497 ("consistent with congressional intent and established precedent, application fees are not adjusted to reflect the actual work done on any particular application"); *see also Lockheed Martin Corp.*, 16 FCC Rcd at 12807; *see also Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation*

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 refund should be granted. SkyTerra has not demonstrated that such circumstances exist here. With respect to your reliance upon *NCTA*, that case specifically dealt with a fee assessed by the agency under the Independent Office Assessment Act (IOAA) (now codified at 31 U.S.C. § 9701).<sup>22</sup> The Supreme Court had held that the statutory language and intent of Congress in the IOAA was to require agencies assessing fees under the IOAA to base such fees on the value to recipients, and the Court of Appeals for the District of Columbia Circuit thus analyzed the IOAA fees at issue under that standard.<sup>23</sup> The fees at issue here, however, were not established under the IOAA, but rather are fees specifically set by Congress.<sup>24</sup>

We therefore find that you have failed to establish the extraordinary and compelling circumstances that would warrant a waiver of the section 1.1107 application filing fee requirement to allow SkyTerra to pay one fee based on the number of proposed orbital locations. Accordingly, we deny your request. If you have any questions concerning this matter, please contact the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens  
Acting Chief Financial Officer

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*Act of 1985*, 2 FCC Rcd 947, 949 (1987) (stating that "processing costs were but one factor in the rough calculus that resulted in the legislated fees"); *see also Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1985*, 3 FCC Rcd 5987, para. 5 (1988) (recognizing that "the amount of a fee represents the Commission's estimate, accepted by Congress, of the average cost to the Commission;" declining to "make individualized determinations of the 'appropriate fee,'" although the actual cost may be more or less in individual situations; and indicating an intent to "levy the fee as determined by Congress . . . except in unusual cases in which the public interest requires otherwise.").

<sup>22</sup> *See NCTA*, 554 F.2d at 1096.

<sup>23</sup> *See id.* at 1097.

<sup>24</sup> *See Lockheed Martin*, 16 FCC Rcd at 12809, n.11.

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

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Federal Communication Commission  
Bureau / Office

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In the Matter of )  
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SKYTERRA COMMUNICATIONS, INC. )  
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Application for Authority to Construct, Launch )  
and Operate Two Collocated Geostationary )  
Satellites in the Fixed-Satellite Service Using the )  
Ka-Band at the 95° W.L. Orbital Location )  
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File No. SAT-LOA-20050216-00040

*2005 Letter  
- Assign to Regina  
30 days  
MAR  
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ATTN: Managing Director

**PETITION FOR WAIVER**

SkyTerra Communications, Inc. ("SkyTerra"), by its attorneys, hereby requests that the Commission waive its rules for the submission of filing fees with regard to the above-captioned application to construct, launch and operate a Ka-band satellite system to be located at 95° W.L. Specifically, SkyTerra requests authority to submit one filing fee for its proposed two-satellite system. As discussed further below, such a waiver would (i) be consistent with the Commission's past practice for Ka-band geostationary fixed-satellite applications, (ii) ensure that the intent of Congress, the courts and the Commission is satisfied in assessing fees that bear a relationship to the Commission's processing costs, and (iii) help to facilitate SkyTerra's provision of innovative satellite services to customers in the United States.

**I. Background**

On October 29, 2004, SkyTerra filed a single application for authority to construct, launch and operate a two Ka-band satellite system to be located at 95° W.L. orbital location. At the time, the company submitted one filing fee of \$102,700.00 with the application because it

proposed to use only one orbital position for a single system operating from a two-satellite platforms. As described further below, SkyTerra believes that a single fee for the two-satellite platform system is consistent with the Commission's policy and past practice with respect to geostationary systems as well as the fee structure set forth in the Communications Act, the Commission's Rules and the International Bureau's Fee Filing Guide.

In a letter dated February 3, 2005, the International Bureau indicated that SkyTerra must submit a filing fee for each satellite that is part of its system, regardless of the fact that only one orbital position will be used.<sup>1</sup> On February 14, 2005, SkyTerra submitted an application for SkyTerra-1 and on February 16, 2005, it submitted an application for SkyTerra-2. In accordance with the directions of the International Bureau, SkyTerra submitted a separate \$102,700.00 filing fee with each of these applications. SkyTerra continues to believe that a single filing fee is appropriate in this case and is therefore submitting this petition and hereby requests that the Commission waive its rules, to the extent necessary, to allow SkyTerra to submit one filing fee based on the single orbital location it proposes to use for its two-satellite Ka-band GSO system.

## **II. The Communications Act and the Commission's Rules and Policies Favor Assessing a Per Orbital Slot Filing Fee**

Section 8(g) of the Communications Act of 1934, as amended (the "Act")<sup>2</sup> sets forth the filing fees required for FCC applications. That section, as amended, indicates that the fee for an "initial application" for "authority to launch and operate" a geostationary space station is \$102,700.00. No where in the statute or implementing rules is it defined or discussed whether this fee is on a per satellite basis. The absence of this discussion is particularly noteworthy since

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<sup>1</sup> See Letter of Fern J. Jarmulnek, Deputy Chief, Satellite Division, to Robert Lewis, dated Feb. 3, 2005, at 2.

<sup>2</sup> 47 U.S.C. § 158(g).

the very same statute and section explicitly requires the Commission to charge a filing fee *per satellite* for space station assignment and transfer of control applications. The same structure and language from Section 8 of the Act regarding satellite fees also appears in the Commission's Rules<sup>3</sup> and in the International Bureau's fee filing guide for 2004.<sup>4</sup> The International Bureau, however, has concluded that SkyTerra should pay a fee for each satellite it proposes to launch. A review of legislative and regulatory has not revealed any specific congressional intent on this issue.

Subsection (g) was added to Section 8 of the Act pursuant to the Consolidated Omnibus Budget and Reconciliation Act of 1985 (the "Budget Act"), which specifically prescribed charges for certain regulatory actions taken by the Commission.<sup>5</sup> The provisions of the Budget Act applicable to the FCC were implemented by the Commission in a rule making proceeding.<sup>6</sup> As evidenced by the breadth of Section 8(g), the Budget Act contained a schedule of fees applicable to almost every application for every service filed at the Commission. For example, under the Common Carrier Services subpart of Section 8(g), there are fee schedules for approximately 185 different applications in 22 different services. Further, approximately half of the applications in Section 8(g) contain some limiting language such as per satellite, per station, per system, or per request. Thus, one could reasonably concluded that if Congress intended these

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<sup>3</sup> See 47 C.F.R. § 1.1107.

<sup>4</sup> See Federal Communications Commission, "International and Satellite Services Fee Filing Guide," effective Aug. 10, 2004, at 14. Section 9.a of the Guide (concerning GSO systems such as the Ka-band system proposed in the SkyTerra application) says that the fee for an "Application for Initial Authority to Launch and Operate" is \$102,700.00. That section does not say that the fee is per satellite. Section 9.b of the Guide, however, says explicitly for space station assignment and transfer applications that the fee to be paid is "per satellite." *Id.*

<sup>5</sup> Pub. L. No. 99-272, 5002(e) and (f), 99 Stat. (1986).

<sup>6</sup> See Gen. Docket No. 86-285.

fees to apply per satellite, or per some other limiting language, it would have expressly included this language in the Budget Act. It did not.

The legislative history of the Budget Act and the Commission's rule making proceeding implementing the Budget Act do not discuss this limiting language. The only reference to Congress' intent was in 1995 when the Commission issued a public notice concerning the application fees to be paid by initial applicants for Ka-band space station authorizations.<sup>7</sup> It determined that the fee should be paid on a per orbital slot basis rather than per satellite. In a letter dated the same date as the public notice, the FCC's Managing Director said the following:

In view of the evolution in geostationary satellite technology and the multiple geostationary space stations that . . . Ka-band applicants may propose to deploy in their systems, the International Bureau's Satellite staff has tentatively concluded that the "per space station" fee formulation, currently mandated by Congress' filing fee schedule for all geostationary space stations, may not be suitable for this fixed service in the Ka-band. *See* 47 U.S.C. § 158(g). We agree and, therefore, we expect that the Commission will request an amendment to the Congressionally imposed fee schedule in order to modify the fee payment amount required for Ka-band space station applications.<sup>8</sup>

Although the Managing Director characterized the per orbit location fee structure as "interim," there is no indication that the Commission has changed this policy. Moreover, it remains unclear whether under the Act there is a need to do so. As discussed above, while the Act explicitly requires a per satellite fee for assignment and transfer of control applications, it is silent on whether the fee for initial applications is per satellite or per orbit location. The Commission therefore appears to have the discretion to establish GSO application fee methodology, and it has done so by choosing to base the fees on the number of orbit locations. Indeed, the Commission has continued this practice in the context of other GSO systems,

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<sup>7</sup> *See* FCC Public Notice, No. 56031, Sept. 28, 1995.

<sup>8</sup> Letter of Andrew S. Fishel, Managing Director, FCC, to John P. Janka, Sept. 28, 1995 (the "Fishel Letter").

including 2 GHz and 36-54.1 GHz systems,<sup>9</sup> Hughes GSO Expressway<sup>10</sup> and the Lockheed Martin GSO Regional Positioning System.<sup>11</sup> Only where an assignment or transfer of control application is involved has the Commission required that GSO application fees be paid on a per satellite basis.<sup>12</sup>

In the Fishel Letter, the Managing Director also makes the statement that the “per space station” fee formulation was mandated by Congress’ filing fee schedule for all geostationary space stations. However, the Managing Director did not cite any case law or legislative history to support this presumption. As discussed above, an extensive search of the legislative history and the implementing rule making by Skyterra’s counsel did not reveal any evidence that Congress mandated a per space station filing fee for all geostationary space station applications.

For these reasons, SkyTerra believes there is clear precedent for the Commission to require that SkyTerra pay a single \$102,700.00 application fee for its proposed two-satellite geostationary system to be located at 95° W.L.

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<sup>9</sup> See FCC Public Notice, Filing Fee Waiver Established for Applications Proposing Geosynchronous Space Stations in Response to Report Nos. SpB-88 and SPB-89, Mimeo No. 76181 (Aug. 26, 1997).

<sup>10</sup> See Letter of Andrew S. Fishel, Managing Director, FCC, to John J. Janka, dated Aug. 26, 1997.

<sup>11</sup> See Letter of Mark Reger, Office of Managing Director, FCC, to Counsel for Lockheed Martin, dated June 22, 2000.

<sup>12</sup> See, e.g., *Lockheed Martin Corp.*, 16 FCC Rcd 12805 (2001). Moreover, it is important to note that in Lockheed and other assignment cases where the Commission required a per satellite filing fee, the fee amounts were not nearly as great as the \$102,700.00 that SkyTerra has already paid. In Lockheed the total per satellite fee paid was \$57,510.00. *Id.*; see also Letter from Mark Reger, *supra* note 11 (requiring an assignment applicant to pay a per satellite fee of \$60,030.00). If SkyTerra is required to pay a per satellite fee it will be nearly four times the amounts paid in the assignment cases.

### III. Grant of a Waiver Is Consistent with the Public Interest and the Intent Behind the Commission's Application Fee Payment Requirement

The Act allows the Commission to waive or defer a fee payment requirement “for good cause shown, where such action would promote the public interest.”<sup>13</sup> SkyTerra believes that the grant of this waiver request would be consistent with existing public policy, past precedent and the intention of Congress when it initially adopted the fee schedule.

In 1995 when the Managing Director first considered this issue, it reached a public policy conclusion when it stated that a “per space station . . . filing fee schedule for all geostationary space stations, may not be suitable for this fixed service in the Ka-band.”<sup>14</sup> It further indicated that the Commission would seek to permanently modify the fee payment required for Ka-band space station applications.<sup>15</sup> In the intervening time since 1995, the Commission has not reached any contrary conclusion regarding the appropriate fee schedule for Ka-band geostationary systems. However, it does not appear that it has obtained any modifications to the fee schedule to actually implement the policy articulated in 1995. In the intervening timeframe, the Commission has granted waivers to similarly situated geostationary systems.<sup>16</sup> Without any contrary public policy finding failure to grant the fee waiver requested herein, would be inconsistent with prevailing public policy.

Here, SkyTerra is seeking to implement an innovative satellite design that will facilitate the provision of broadband services to rural America. These are services that are at the forefront of U.S. government policy seeking to ensure that every American has access to broadband

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<sup>13</sup> 47 U.S.C. § 158(d)(2). *See also* 47 C.F.R. § 1.3.

<sup>14</sup> *See note 7 supra.*

<sup>15</sup> *Id.*

<sup>16</sup> *See notes 9-11 supra.*

communication services. The two-satellite design of the SkyTerra system was developed to enhance the capabilities of the services SkyTerra can provide to its customers as well to ameliorate the risks associated with a single satellite system. Specifically, SkyTerra could not take full advantage of all of the available Ka-band frequency if it used a single platform in a single location. This is because of the power limitations associated with an individual satellite bus. By using two buses at a single orbit location with interleaved frequencies, SkyTerra is able to maximize the number of customers it can serve and the types of services it can provide. All this can be done within the interference limitations associated with a single orbit position. With this design, SkyTerra has developed a frequency efficient robust system that will far exceed any available or proposed satellite based broadband system. It would be counterintuitive if the Commission were to penalize SkyTerra for proposing this innovative design by requiring it to pay two filing fees to use a single geostationary satellite orbit position.

The grant of a waiver here would also be consistent with the intention of Congress, the courts and the Commission that the application processing fees should bear a reasonable relationship to the Commission's expenses in processing the application. For example, the Commission said in 1990 that it had "worked with Congress to ensure that, to the best extent possible, fees reflect only the direct cost of processing the typical application or filing."<sup>17</sup> Similarly, the U.S. Court of Appeals for the D.C. Circuit has said that "the agency must in all

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<sup>17</sup> Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989, *Memorandum Opinion and Order*, 5 FCC Rcd 3558, 3574 (1990).

cases demonstrate a necessary, natural, or probable correspondence between the sums to be paid and the character or extent of the services rendered.”<sup>18</sup>

When the Commission’s staff processes an initial GSO satellite application, its primary concern is to ensure that the proposed system will not interfere with other satellites or services using radiofrequency spectrum. Where an applicant proposes to operate a GSO system using two-satellites transmitting on the same frequency from one orbit location, the analysis involved for the Commission’s staff is no different than the analysis involved if the same system were to operate from one orbit location using one satellite. In SkyTerra’s application, the company is proposing a system that uses two-satellites that will operate on the same frequencies at the same location. As discussed above, the two-satellites are necessary in SkyTerra’s proposal due to the large amount of power required to provide the broadband services SkyTerra plans to offer, including such services as on-demand video. Thus, the work required to analyze and grant this application does not warrant a fee that is twice that of an application for a single satellite operating from the same orbital location.

This is particularly true when one considers that the Commission has granted applications for single hybrid satellites that operate in more than one frequency band (e.g., C and Ku-band). For these applications the Commission’s staff would need to ensure that there is adequate coordination with other operators in two separate sets of frequencies. Such an analysis clearly involves more Commission resources than ensuring coordination for two-satellites in one orbital location operating in one frequency band. Nevertheless, a per satellite application fee

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<sup>18</sup> *Nat’l Cable Television Ass’n v. FCC*, 554 F.2d 1094, 1108 (D.C. Cir. 1976) (internal quotations, ellipses and brackets omitted) (holding that the FCC could not charge cable systems a per subscriber fee because there was “no evidence . . . that it costs the agency twice as much to authorize and regulate a cable system with 2000 subscribers as it does to authorize and regulate one with 1000 subscribers”).

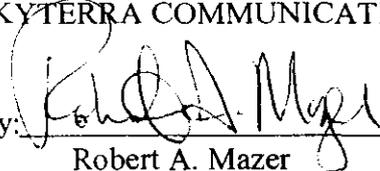
methodology would require that an applicant proposing to operate one satellite in two bands would pay half the fee for an applicant seeking to operate two-satellites in one orbital slot in one band. Clearly the Congress, the courts and the Commission would not have intended such a result.

**IV. Conclusion**

For all of the foregoing reasons, SkyTerra respectfully requests that the Commission waive its rules and process SkyTerra's above-captioned application with the per orbital location filing fee SkyTerra has already submitted.

Respectfully submitted,

SKYTERRA COMMUNICATIONS, INC.

By: 

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February 17, 2005

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International Bureau

Federal Communications Commission  
Washington, DC 20554

DA 05-274

February 3, 2005

Mr. Robert Lewis  
SkyTerra Communications, Inc.  
19 West 44<sup>th</sup> Street, Suite 507  
New York, NY 10036

Re: Application of SkyTerra Communications, Inc., File Nos. SAT-LOA-20041029-00205, SAT-AMD-20041202-00215, Call Sign: S2648

Dear Mr. Lewis:

This is in reference to, SkyTerra Communications, Inc.'s ("SkyTerra's") above-referenced application for authority to construct, launch and operate two co-located geostationary satellites in the Fixed-Satellite Service, using the 18.3-18.8 GHz, 19.7-20.2 GHz, 28.35-28.6 GHz and 29.25-30 GHz frequency band, at the 95° W.L. orbital location. For the reasons discussed below, we dismiss the application as defective, without prejudice to refileing.

Section 25.114(c) of the Commission's rules, 47 C.F.R. § 25.114(c), requires all space station applicants to submit all applicable items of information listed in its subsections. Sections 25.112(a)(2) and (b)(1) of the Commission's rules, 47 C.F.R. §§ 25.112(a)(2) and (b)(1), state that an application that does not substantially comply with the Commission's rules will be returned to the applicant as unacceptable for filing unless the application is accompanied by a waiver request with reasons supporting the waiver. In the *Space Station Reform Order*, the Commission affirmed the policies embodied in this rule by continuing to require applications to be substantially complete when filed.<sup>1</sup> As the Commission noted, the procedures and rules it adopted will enable the Commission to establish satellite licensees' operating rights clearly and quickly, and as a result, allow licensees to provide service to the public much sooner than might be possible under our previous licensing procedures.<sup>2</sup> Finding defective applications acceptable for filing is not consistent with the rules and policies adopted by the Commission in the *Space Station Reform Order* and only serves to create uncertainty and inefficiencies in the licensing process.

<sup>1</sup> Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking, Space Station Reform Order*, 18 FCC Rcd 10760, 10852 (para. 244)(2003), citing Amendment of the Commission's Space Station Licensing Rules and Policies, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3847, 3875-76 (para. 84)(2002).

<sup>2</sup> *Space Station Reform Order*, 18 FCC Rcd at 10765-66 (para. 4). See also Echostar Satellite LLC, *Order on Reconsideration*, DA 04-4056 (Int'l Bur. 2004).

In its application, SkyTerra does not submit any link budgets for the downlink direction of transmission. Thus it did not supply an overall link performance analysis as required by Section 25.114(c)(8) of the Commission's rules, 47 C.F.R. §25.114(c)(8). SkyTerra has also filed antenna contour diagrams for one of its proposed satellites, Miraxis, that do not show contours at 2 dB intervals down to 10 dB below peak value and at 5 dB intervals to 20 dB, as required by Section 25.114(c)(7). Further it is not clear how these antenna beams are associated with those listed in table S8 of the schedule S.

In addition, we note that SkyTerra filed one Schedule S application and one application fee to cover both of its proposed satellites. Applicants seeking authority for more than one satellite to operate in geostationary-satellite orbit (GSO), as SkyTerra proposes, must file one Schedule S application for each proposed satellite.<sup>3</sup> It must also file a fee to cover each application for authority to launch and operate a GSO space station.<sup>4</sup>

Accordingly, pursuant to the Commission's rules on delegated authority, 47 C.F.R. § 0.261(a)(4), we find that this application, File No. SAT-LOA-20041029-00205, SAT-AMD-20041202-00215, is defective under Section 25.114(b) of the Commission's rules, 47 C.F.R. § 25.114(b), and must be returned pursuant to Section 25.112(a) of the rules, 47 C.F.R. §25.112(a). We therefore dismiss the application without prejudice to refiling. If SkyTerra refiles an application identical to the one dismissed, with the exception of supplying the missing information, it need not pay an application fee for one of the space stations. See 47 C.F.R. § 1.1109(d).

Sincerely,

*Fern J. Jarmulnek*

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Deputy Chief  
Satellite Division

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<sup>3</sup> Amendment of the Commission's Space Station Licensing Rules and Policies, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Red 13486 (2003), *erratum*, 18 FCC 15306 (2003).

<sup>4</sup> 47 C.F.R. § 1.107.