July 31, 2006

By Electronic Filing

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

Re: Ex Parte Filing: Emergency Alert System, EB Docket No. 04-296

Dear Ms. Dortch:

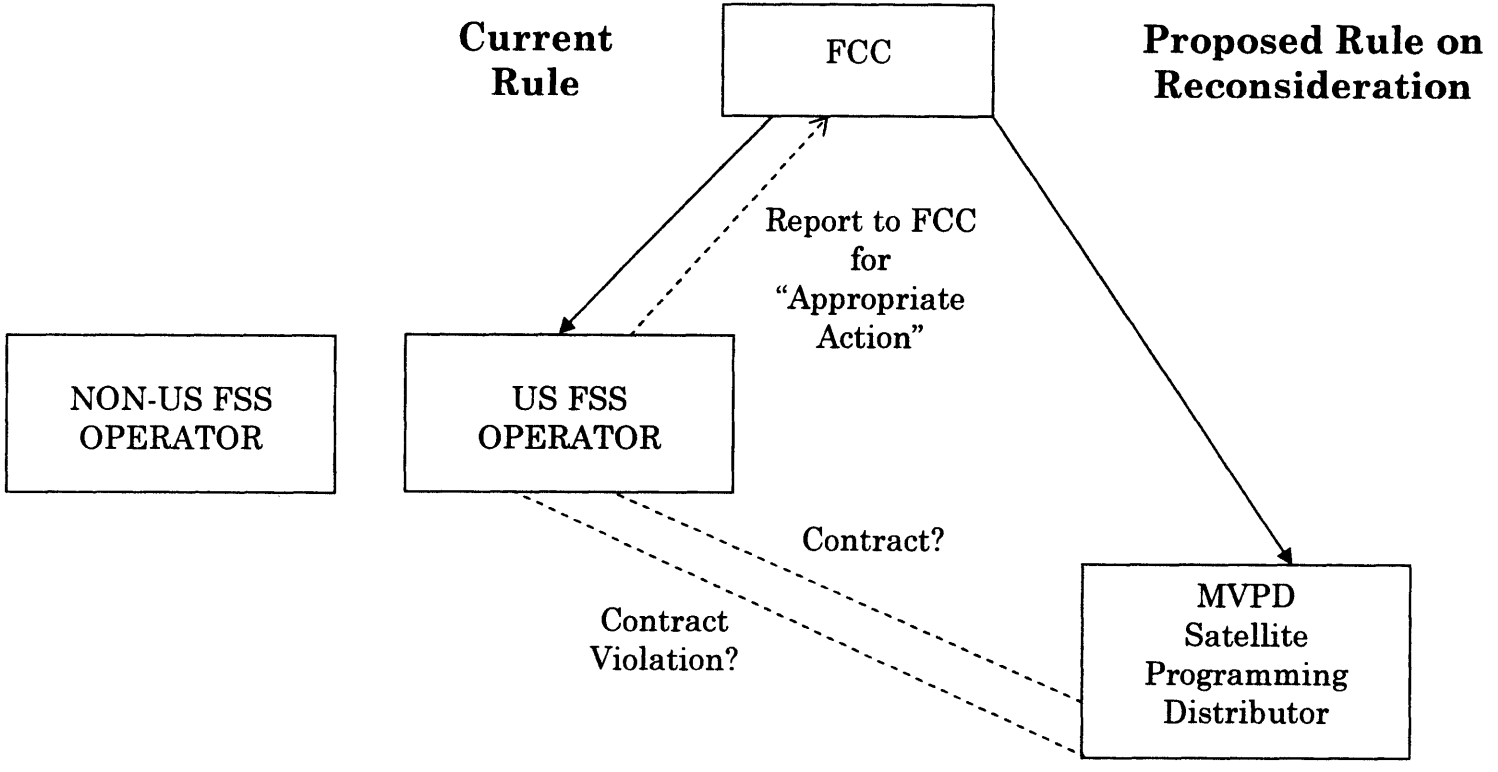
This morning Kalpak Gude of Intelsat and Peter Rohrbach and Karis Hastings of Hogan & Hartson, counsel for SES Americom, Inc., met with Joel Kaufman and William Scher of the Office of the General Counsel to discuss matters relating to the above-referenced proceeding. The attached documents formed the basis for the discussion.

Please direct questions concerning this matter to the undersigned.

Sincerely,

Karis A. Hastings
Counsel for SES Americom, Inc.

cc: Joel Kaufman
William Scher


Current Rule
FCC
Proposed Rule on Reconsideration
Report to FCC for "Appropriate Action"
NON-US FSS OPERATOR
US FSS OPERATOR
Contract?
Contract Violation?
MVPD Satellite Programming Distributor

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; analog television broadcast stations including Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV) broadcast stations, including digital CA and digital LPTV stations; analog cable systems; digital cable systems which are defined for purposes of this Part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS providers~~services~~, as defined ~~in 47 C.F.R. § 25.701(a) (including certain Ku-band Fixed-Satellite Service Direct to Home providers)~~below; SDARS, as defined in 47 C.F.R. § 25.201; participating broadcast networks, cable networks and program suppliers; and other entities and industries operating on an organized basis during emergencies at the National, State and local levels. These entities are referred to collectively as EAS Participants in this Part, and are subject to this Part, except as otherwise provided herein. These rules in this Part are effective on December 31, 2006 for DTV, DAB, digital cable and SDARS providers, and on May 31, 2007 for DBS providers. At a minimum EAS Participants must use a common EAS protocol, as defined in §11.31, to send and receive emergency alerts in accordance with the effective dates listed above and in the following tables:

* * * * *

(e) For purposes of the EAS, DBS providers are multichannel video programming distributors, as defined in 47 C.F.R. § 76.1000(e), that provide direct-to-home satellite services, as defined in Section 303(v) of the Communications Act, 47 U.S.C. § 303(v), using U.S. licensed or non U.S. licensed satellites in the 12.2 to 12.7 GHz DBS frequency bands or in the Ku band fixed satellite service frequency bands.

(f) Organizations using other communications systems or technologies such as low earth orbit satellite systems, paging, computer networks, etc. may join the EAS on a voluntary basis by contacting the FCC. Organizations that choose to voluntarily participate must comply with the requirements of this part.

§ 25.701 Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b), (c), (d), (e) and (f) of this section. As used in this section, DBS providers are any of the following:

(1) Entities licensed to operate satellites in the 12.2 to 12.7 GHz DBS frequency bands; or

(2) Entities licensed to operate satellites in the Ku band fixed satellite service and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set aside of at least one channel of non commercial programming pursuant to paragraph (e) of this section, or

(3) Non U.S. licensed satellite operators in the Ku band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set aside of one channel of non commercial programming pursuant to paragraph (e) of this section.

Emergency Alert System (EB Docket No. 04-296)

Petition for Partial Reconsideration (filed Dec. 27, 2005) –

PanAmSat/SES Americom/Intelsat support the extension of EAS requirements to DTH satellite services. Their petition for partial reconsideration raises two issues:

1. ***Who should be required to comply?*** EAS obligations relate to content of programming and can best be met by the programming distributors that control the content of DTH programming.

    i. Commission should impose EAS obligations directly on programming distributors, rather than indirectly via satellite operators
    ii. If Commission declines this request, it should grandfather existing contracts

2. ***Application to non-U.S. services:*** EAS obligations should not apply to DTH FSS services directed primarily to consumers outside the United States

Arguments

1. **DTH programming distributors should be directly subject to the EAS requirements**

    - ***Most logical; promptest and most effective EAS dissemination.*** Programming distributors control the content of programming and are in the best position to incorporate EAS messages into that content. Placing EAS obligations with the party best able to meet them is the most logical approach and the most reliable way to ensure prompt and effective distribution of EAS messages to DTH FSS customers.

    - ***FCC has ample authority to regulate programmers***
        - Earth station licensing
        - Section 303(v) jurisdiction over distribution or broadcasting of programming or services via satellite directly to the subscriber's premises

    - ***Putting FSS operators in the role of "enforcer" undermines EAS and harms FSS, with no upside benefit***
        - ***Unnecessary middleman:*** FSS operators cannot comply directly – they can act only as an unnecessary middleman
        - ***Undermines effectiveness:***
            - FSS operators at best have only contractual remedies
            - Current approach writes the FCC out of enforcement – unless Commission imposes obligations directly on DTH providers, no way for agency to force DTH programmers to comply
        - ***Delays EAS dissemination:*** FSS operators currently have no basis on which to demand compliance by DTH programmers already under contract

- ***Inconsistent with other services:*** For all other services, Commission has imposed EAS requirements directly on programming distributor
- ***Inconsistent with Commission's statements regarding HSD services:*** Commission found that it would be "very burdensome" for HSD service providers, who are not the ones providing programming to HSD subscribers, to distribute EAS messages
- ***Unnecessary costs and burdens:*** Imposes contracting, monitoring, enforcement, litigation and other costs on FSS operators, none of which promotes EAS message dissemination or serves any other policy objective
- ***Bizarre and confusing patchwork:*** Different channels on single DBS "one dish" service would be treated differently – for some, DBS programmer would handle EAS; for others, FSS operator would handle EAS; and potentially for some, there would be *no* EAS requirement

- ***No logical or policy objections***
  - Oppositions raised a number of erroneous procedural objections but never disputed the fundamental logic of our request
  - Our reply rebuts each of their jurisdictional and procedural claims

- ***Grandfathering request***
  - If the Commission declines our request to impose EAS obligations directly on programmers, it should grant our grandfathering request
    - ***Wishing won't make it so:*** FSS operators have no way to force DTH programmers to comply
      - No means, other than through contracts, to force customers to participate in EAS system
      - Existing contracts do not give FSS operator this right
      - DTH programmers tend to enter into long term contracts – 2007 compliance not realistic across the board

2. **Application to Non-U.S. Systems:** EAS obligations should not be applied to DTH FSS services that serve the U.S. solely on a "spillover" basis

   - ***Will not promote EAS message dissemination:***
     - Programmers are unlikely to interrupt foreign programming to include warnings regarding U.S. emergencies
     - If these services are not exempted, most likely effect is that foreign programmers will stop serving U.S. customers
     - Will deprive U.S. customers of access to valuable programming without broadening EAS access in the U.S.

   - ***International comity:*** Request should also be granted based on considerations of international comity and the long-held U.S. policy that countries should not block foreign programming at their borders based upon content restrictions

   - ***No opposition:*** This request has not been opposed