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

In the Matter of	)	
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The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band	)	IB Docket No. 06-123

To: The Commission

COMMENTS OF SES AMERICOM, INC.

SES Americom, Inc. ("SES Americom"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby submits its comments concerning the Petition for Reconsideration of Telesat Canada[1] in response to the Order on Reconsideration in the above-captioned proceeding, FCC 07-174 (rel. Sept. 28, 2007) ("*Reconsideration Order*"). Telesat Canada's request that U.S. 17/24 GHz licenses be conditioned on a coordination requirement is unnecessary because the obligation to coordinate applies to all U.S. licensees as a matter of law, but SES Americom has no objection to the request. However, the Commission should decline to introduce any further flexibility for U.S. licensees that would undermine the four-degree spacing grid on which the regulatory framework for 17/24 GHz BSS service is based.

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[1] Petition for Reconsideration of Telesat Canada, IB Dkt No. 06-123, filed Nov. 21, 2007 ("Telesat Petition").

INTRODUCTION

SES Americom has participated actively in this proceeding because we have a strong interest in the prompt implementation of rules that will facilitate the use of 17/24 GHz capacity to increase the video service delivery options for U.S. consumers. SES Americom has repeatedly made clear that its business plans include the deployment of 17/24 GHz spacecraft to serve the U.S., and we have urged the Commission to ensure that new entrants can compete with DBS incumbents on a level playing field.[2]

United States customers will benefit from another competitive platform for the direct-to-premise distribution of video and other services. Once the freeze is lifted, SES Americom plans to seek authority to serve the U.S. using 17/24 GHz spectrum.

Thus, the terms and conditions pursuant to which the Commission will grant market access to foreign-licensed 17/24 GHz BSS operators and the impact of ITU coordination obligations on U.S. licensees are of critical importance to SES Americom's business plan. The Telesat Petition requests that the Commission impose two conditions on each U.S. license in this band. The first would make the license grant "subject to the licensee coordinating with satellite operators having ITU date priority." Telesat Petition at 3. The second would make "the orbital location specified in the grant subject to modification to an off-grid location if necessary to facilitate coordination with a satellite operator having ITU date priority." *Id.*

SES Americom has no objection to the first proposal – the requirement to coordinate applies as a matter of international and domestic law and is already a standard condition in Commission satellite licenses. However, we believe the Commission should reject

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[2] *See, e.g.,* Comments of SES Americom, Inc., IB Dkt No. 06-123 (filed Oct. 16, 2006) ("SES Americom Comments") at 2, 5-9; Reply Comments of SES Americom, Inc., IB Dkt No. 06-123 (filed Nov. 15, 2006) ("SES Americom Reply Comments") at 6, 12-14.

the second proposal, which would further erode the four-degree spacing grid that was a central feature of the 17/24 GHz regulatory structure adopted by the Commission.

I. COORDINATION IS REQUIRED UNDER APPLICABLE LAW EVEN ABSENT AN EXPRESS LICENSE CONDITION

Telesat Canada's request that a coordination condition be imposed on 17/24 GHz licensees should be uncontroversial, but is clearly not necessary. The standard satellite license terms include a statement regarding the licensee's obligation to satisfy international coordination requirements, and we would expect the Commission to make similar language part of any 17/24 GHz license as a matter of course. However, even if the Commission issued 17/24 GHz licenses that did not include this condition, the obligation to coordinate would still apply to all 17/24 GHz licensees as a matter of law.

As a threshold matter, the coordination requirements and procedures specified in the ITU Radio Regulations have the force of treaty. As the Commission has explained "[t]he United States is under a treaty obligation, in connection with its membership in the ITU, to coordinate all U.S. authorized satellite services internationally."[3] This obligation clearly applies regardless of whether the Commission has expressly conditioned an individual satellite license to require coordination.

Priority for use of spectrum is determined by specific ITU rules, and these rules are binding on ITU signatories. The Commission by definition issues licenses subject to U.S. ITU obligations, and those benefits and burdens apply necessarily to the ability of the

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[3] *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 12 FCC Rcd 22310, 22335 (1997).

Commission to license satellites. In that sense, the typical license condition is as much a notification to the licensee of coordination requirements as it is a requirement itself.

Furthermore, a specific license condition is less significant given that the Commission has codified requirements relating to international coordination in Section 25.111 of its rules, which provides that:

> Applicants, permittees and licensees of radio stations governed by this part shall provide the Commission with all information it requires for the Advance Publication, Coordination and Notification of frequency assignments pursuant to the international Radio Regulations. No protection from interference caused by radio stations authorized by other Administrations is guaranteed unless coordination procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments with other Administrations. 47 C.F.R. §25.111(b).

The standard satellite license conditions expressly incorporate the requirements of Section 25.111,[4] and SES Americom would expect the same practice to be followed with respect to 17/24 GHz licenses.

When it adopted its first-come, first-served licensing approach for geostationary satellites, the Commission explained its policies with respect to coordination:

> U.S. licensees assigned to a particular orbital location in a first-come, first served approach take their licenses subject to the outcome of the international coordination process. The Commission is not responsible for the outcome of any particular satellite coordination and does not guarantee the success or failure of the required international coordination. Moreover, we expect U.S. licensees to abide by international regulations when their systems are

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4 *See, e.g.,* File No. SAT-LOA-20070314-00051, granted July 18, 2007, at ¶ 5.

> coordinated. This may mean that the U.S.-licensee may not be able to operate its system if the coordination cannot be appropriately completed. Indeed, with the first-come, first served approach, we assign applicants to the orbit location that is requested. Consequently, the applicant assumed the coordination risk when choosing that particular orbit location at the time it submitted its application.[5]

These policies apply to 17/24 GHz licensing pursuant to the Commission's decision to process 17/24 GHz license applications using the first-come, first served licensing approach.[6]

Thus, whether or not 17/24 GHz licenses contain terms expressly requiring international coordination is irrelevant. Commission licensees in the 17/24 GHz band must comply with ITU coordination procedures in any event pursuant to the requirements of international treaties, Commission regulation, and controlling Commission precedent. Telesat's request for imposition of a condition mandating coordination is therefore unnecessary but also unobjectionable.

II. THE COMMISSION SHOULD NOT GRANT ADDITIONAL FLEXIBILITY FOR DEPARTURES FROM THE GRID

SES Americom, however, opposes the second condition Telesat Canada requests. Making orbital locations assigned in U.S. licenses subject to adjustment to facilitate international

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[5] *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760 (2003) ("*Space Station Licensing Reform Order*") at ¶ 96 (footnotes omitted). *See also id.* at ¶ 295 (FCC can license operations on a temporary basis at an orbit location where another Administration has ITU priority, but makes such grants subject to the outcome of international coordination).

[6] *Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Report & Order, FCC 07-76, 22 FCC Rcd 8842 (2007) ("*17/24 GHz Order*") at ¶ 8. The Commission explained that "the first-come, first-served licensing approach works well in conjunction with the ITU processes for unplanned bands, such as this one." *Id.* (footnote omitted).

coordination would further undercut the four-degree spacing framework established by the Commission to optimize use of 17/24 GHz spectrum and cannot be justified on the facts here.

In its initial *17/24 GHz Order*, the Commission determined that a four-degree spaced grid would best promote the Commission's "mutual goals of maximizing orbital capacity while accommodating small-diameter receiving antennas." *17/24 GHz Order* at ¶ 70. While the Commission recognized that some flexibility regarding orbital locations would be beneficial, it rejected arguments for total latitude. The Commission reasoned that "[a]llowing complete flexibility in orbital spacing would result in inefficient use of scarce geostationary satellite orbit resources and limit opportunities for competitive entry." *Id.* at ¶ 71. The Commission decided to allow offsets from the grid only subject to a requirement that the offset licensee operate on a non-interference basis with respect to adjacent on-grid locations. *Id.* at ¶ 74.

In the *Reconsideration Order*, the Commission revised its decision, granting U.S. license applicants new flexibility to request offsets. Specifically, the modified rules gave applicants the ability to seek locations up to one degree from the grid with full power and full interference protection, provided the offset did not result in less than four-degree spacing with respect to a prior-filed application or license. *Reconsideration Order* at ¶ 15. In offset cases not meeting these conditions, the rules continued to require operation on a non-interference basis. The parties seeking the one-degree latitude based their requests in part on a concern about accommodating international filings that might not conform to the grid. *See id.* at ¶¶ 6, 7, & 12 (citing EchoStar and Telesat Canada *ex parte* filings).

In submissions prior to issuance of the *Reconsideration Order*, Telesat Canada claimed that allowing only a one-degree flexibility would not address all its concerns regarding

accommodation of its expected Canadian licenses. *See id.* at ¶ 12. The Commission, however, expressly rejected Telesat's request for offset latitude of greater than one degree. *Id.* at n.56.

The Telesat Petition provides no rationale for the Commission to revisit that decision here. Telesat Canada repeats its claim that the flexibility accorded in the *Reconsideration Order* will not address every situation of concern to Telesat Canada. Telesat Petition at 4. But certainly the one-degree flexibility the Commission has already adopted for offsets from the grid should be adequate to address the vast majority of circumstances in which a U.S. licensee concludes that an orbital location shift would facilitate coordination. Furthermore, the rules continue to allow offsets of greater than one degree subject to a non-interference condition.

Blanket relief granting even broader leeway to depart from the grid would nullify the Commission's plan for efficient spacing and is not warranted to address a limited number of unusual cases. Instead, the Commission can consider individual requests for greater than one-degree offsets on a case-by-case basis through requests for waiver. Where allowing a larger offset would not result in a reduction in available orbital locations for 17/24 GHz operations or adversely affect adjacent systems that comply with the Commission's spacing rules, the Commission can grant a waiver because the objectives underlying the Commission's policies would not be violated.[7]

If allowing the offset would conflict with the Commission's spectrum efficiency goals or adversely impact compliant operators, however, the waiver should be denied. This may ultimately mean that a U.S. license applicant cannot successfully coordinate with a network

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[7] *See, e.g., PanAmSat Licensee Corp.*, 17 FCC Rcd 10483, 10492 (Sat. Div. 2002) ("Generally, the Commission may grant a waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.").

licensed by a foreign administration with ITU priority. However, under first-come, first-served licensing, that is a chance the U.S. applicant must take. As discussed above, Commission policies make clear that a party seeking a U.S. license, having selected an orbital location to apply for, assumes the risk associated with the international coordination process at that location.

The Commission should reaffirm its rejection of Telesat Canada's request that greater than one-degree offsets be authorized to accommodate international coordination.

CONCLUSION

As discussed herein, 17/24 GHz licenses will clearly be subject to a coordination requirement in any event, but SES Americom does not object to including express language to that effect in the licenses. However, SES Americom opposes any broadening of the flexibility that has already been granted for U.S. licensees to operate at locations offset from the four-degree grid.

Respectfully submitted,

SES AMERICOM, INC.

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CERTIFICATE OF SERVICE

I, Cecelia Burnett, hereby certify that on this 11th day of February, 2008, I caused to be served a true copy of the foregoing "Comments of SES Americom, Inc." by electronic mail upon the following:

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