

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

In the Matter of)
)
FCC Process Reform) GN Docket No. 14-25

To: The Commission

COMMENTS OF SES AMERICOM, INC.

SES Americom, Inc. (“SES”) hereby responds to the Commission’s request for comment on the Report on FCC Process Reform (“Report”).¹ SES commends the Commission for undertaking this important and much-needed comprehensive review of its rules and policies in order to “further the goal of having the agency operate in the most effective, efficient and transparent way possible.”² In these comments, SES identifies specific recommendations in the Report that will best promote this objective.³

I. THE COMMISSION SHOULD IMPROVE PROCESSES RELATED TO SATELLITE AND EARTH STATION LICENSING AND OPERATION

SES supports many of the Report’s recommendations for non-substantive changes in the Commission’s practices and rules with respect to satellite networks. More fundamental alterations to satellite regulation, however, cannot properly be considered here and should instead be addressed as part of the ongoing Part 25 rulemaking.⁴

¹ *FCC Seeks Public Comment on Report on Process Reform*, GN Docket No. 14-25, DA 14-199 (rel. Feb. 14, 2014) (“Notice”), attaching the Report.

² Notice at 1.

³ The recommendations discussed herein are identified with bold print for ease of reference.

⁴ *See Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Report and Order, IB Docket No. 12-267, 28 FCC Rcd 12403 (2013) (“Part 25 Order”).

SES supports the Commission's proposal to change when the FCC would initiate the ITU coordination and notification process for a new satellite network, as described in **Recommendation 5.8**. As the Report observes, the current practice of requiring a Commission application to be filed before the FCC starts the ITU coordination and notification process reflects concerns about ensuring that ITU cost recovery payments are made.⁵ The Part 25 Order adopted a new rule provision requiring submission through the International Bureau Filing System ("IBFS") of a signed declaration reflecting an applicant's acceptance of its cost recovery responsibility. The rule assumes that the declaration would be filed with or after the associated licensing application,⁶ but there is no reason that needs to be the case. Instead, once a declaration confirming responsibility is filed, the Commission should proceed with forwarding coordination materials to the ITU, and simply associate the declaration with the relevant license application once it is filed.

SES also strongly supports proposals to improve the information available through the Commission's website. The IBFS database is a treasure trove of information, but this information is not always easy to locate or access. As discussed in **Recommendation 5.9**, IBFS has long needed an overhaul to make it more user friendly and must be updated to reflect current rules and procedures. The changes suggested in **Recommendation 5.11** are important as well. In particular, as the Commission completes its changeover to a new website, it must ensure that useful information sources that are readily accessible today on the "old" International Bureau page, such as the Permitted Space Station List and Significant Satellite Rulemakings links, continue to be easily accessible and are kept up to date. A summary of available orbital

⁵ See Part 25 Order, 28 FCC Rcd at 12425-26, ¶¶ 60-65, and new Section 25.111(d).

⁶ For example, the rule requires that the declaration include a call sign, which is not assigned by the Commission until an application is submitted in IBFS.

locations and spectrum should also be published, as was contemplated when the Commission adopted its current first-come, first-served licensing for satellite networks in 2003. Furthermore, materials to assist in the preparation of space station license applications should be made available, as outlined in **Recommendation 5.12**.

The Commission should revisit its policies with respect to space and earth station license assignments and transfers of control. In particular, the Commission should pursue the proposal in **Recommendation 5.7** to eliminate the prior approval requirement for *pro forma* assignments and transfers of control in favor of an after-the-fact notification.⁷ At a minimum and pending any further changes, the Commission should streamline processing of such applications, including making them eligible for an automatic grant, consistent with the proposal to expand auto-processing in **Recommendation 2.9**. SES also agrees that the Commission should extend the closing deadline for consummation of space and earth station assignments and transfers of control to match the 180-day period applicable for other license categories, as suggested in **Recommendation 5.30**. Changes to the application fee structure for assignments and transfers of control are also needed, as discussed below.

SES supports continued action in the Part 25 proceeding to streamline information requirements, as discussed in **Recommendation 5.29**. SES and other commenters have weighed in regarding the need to revise Schedule S⁸ and consider moving to a certification-based method

⁷ If the Commission concludes that it lacks authority to eliminate the prior consent requirement for *pro forma* transactions involving non-common carrier space and earth stations, it should seek the legislative changes necessary to pursue this recommendation (*e.g.*, through an expansion of the Commission’s forbearance discretion under Section 10 of the Communications Act).

⁸ See Joint Reply Comments of SES Americom, Inc. and New Skies Satellites B.V., and O3b Limited, IB Docket No. 12-267, filed Feb. 13, 2013 (“SES Part 25 Reply”) at 7-9 and comments cited in nn.12 & 13.

to demonstrate milestone compliance.⁹ These matters and other issues that were not addressed in the initial Part 25 Order¹⁰ should be considered in further proceedings in that docket.

SES supports efforts to eliminate unnecessary reports applicable to satellite operations as well. Thus, the Commission should seek Congressional action to repeal the requirements for the ORBIT Act and International Broadband Data reports, as proposed in **Recommendations 5.46 and 5.47**.

In contrast to the procedural issues discussed above, **Recommendation 5.28**, which calls for revisiting the two-degree spacing framework, clearly does not fall under the rubric of process reform. Because two-degree spacing is central to the Commission's regulatory framework for efficient, interference-free satellite operation, any change to that policy would have major substantive implications.

As a general matter, SES supports retaining and improving upon the Commission's two-degree spacing framework. By creating some level of certainty with baseline uplink and downlink power levels, the existing framework has facilitated rapid market entry by multiple satellites, resulting in a U.S. market that is extremely well served with commercial satellite capacity. The existing two-degree spacing framework can be improved, of course, such as by establishing a more complete set of baseline power levels for common FSS bands and through possible refinements to the rules regarding future adjacent satellites. Such matters are best considered in the ongoing Part 25 rulemaking, taking into account the record that has already been developed.¹¹

⁹ See, e.g., Comments of the Satellite Industry Association, IB Docket No. 12-267, filed Jan. 14, 2013 ("SIA Part 25 Comments") at 14-15.

¹⁰ See Part 25 Order, 28 FCC Rcd at 12470 n.487.

¹¹ See, e.g., SES Part 25 Reply at 17-18.

II. SES SUPPORTS REFORM OF FCC APPLICATION FEE COLLECTION

SES strongly agrees with the proposal in **Recommendation 2.12** for a review of the application fee structure and exploration of any statutory changes needed to promote a more equitable fee framework. The Report observes that under the current fee structure, similar types of applications often have very different charges,¹² and SES concurs that these inconsistencies must be addressed. More importantly, however, changes are needed in the way application fee proceeds are treated to ensure that the Commission’s overall fee program – encompassing both application and regulatory fees – is fair and cost-based.

As the Report indicates, revision of the application fee framework is needed to “ensure that similarly-situated entities are subject to similar fees for similar types of applications.”¹³ One example of the existing disparity is in the fees for assignments and transfers of control. In the broadcast sector, the application fee schedule distinguishes between a “long form” filing used for substantive assignments and transfers, and a “short form” used for *pro forma* applications, with the short form subject to a much smaller application fee.¹⁴ In contrast, the fee rules for space and earth stations do not differentiate between substantive and *pro forma* transfers of control. For space stations, the current fee of \$8,575 per satellite must be paid whether the application is for a simple internal restructuring that requires very little staff review or a substantive change in ownership and control.¹⁵ Pending any other steps to revise the procedures or eliminate the approval requirement for space and earth station *pro forma* assignments and transfers of control, the Commission should at a minimum adopt a policy of

¹² Report at 23.

¹³ *Id.*

¹⁴ See 47 C.F.R. § 1.1104 (fee for long form application is currently \$970, while the short form application fee is \$140).

¹⁵ See 47 C.F.R. § 1.1107.

waiving a portion of the application fee for such applications, as has been advocated by the Satellite Industry Association (“SIA”).¹⁶

Even within the international services category, there are discrepancies in the assignment and transfer of control fee framework that are unreasonable and should be eliminated. Specifically, for fixed earth station assignments and transfers, there are two different fee levels: the first call sign on an application is charged at a higher fee, and a discounted fee applies to every additional call sign listed on the application.¹⁷ This dual fee structure reflects the fact that staff costs associated with processing an assignment or transfer of control application do not vary significantly based on the number of call signs associated with the transaction. Yet for space station assignments and transfers of control, a flat fee of \$8,575 is charged for each satellite on an application.¹⁸ This flat fee structure cannot be justified and should be eliminated in favor of the dual fee approach used for fixed earth stations.

In revisiting the application fee structure, however, the Commission should not limit itself to fixing these individual disparities. Instead, the Commission must acknowledge the interrelationship between application fees and regulatory fees and pursue reforms to make the fee collection system as a whole more rational and cost-justified.

The root of the problem is that application fee receipts are deposited in the Treasury and are not applied to offset the amount to be collected in FCC regulatory fees or otherwise made available to the Commission.¹⁹ This flaw leads to double recovery of

¹⁶ See Part 25 Order at 68 n.487 (citing SIA proposal for partial exemption of fees applicable to *pro forma* and involuntary assignments and transfers of control).

¹⁷ See 47 C.F.R. § 1.1107.

¹⁸ See *id.* The same flat fee structure also applies to applications involving networks of VSATs or mobile satellite earth stations. *Id.*

¹⁹ See 47 U.S.C. § 158(e).

application processing costs, creates competitive disparities, and fundamentally undermines the fairness of the regulatory fee system. Regulatory fees were intended to recover costs associated with discrete and specific Commission activities that do not include application processing.²⁰ Yet in recent years Congress has instructed the Commission to collect its entire appropriation through regulatory fees, even though only a fraction of the Commission's costs derive from these specified regulatory activities.²¹ As a result, parties who pay both application fees and regulatory fees are unfairly being charged twice for the same application processing costs. In contrast, the costs of administering spectrum auctions are subtracted from the amount to be recovered through regulatory fees.²² Thus, unlike SES and others who pay significant application fees, parties who make auction payments in lieu of application fees are not subject to double charging.

Under these circumstances the Commission cannot achieve its goal of having a regulatory fee system that is fair and accurately reflects the costs of regulatory activities.²³ Instead, entities that are subject to significant application fees will always be paying substantially more than their share of Commission costs. Accordingly, SES urges the Commission to seek any required legislative change to allow revenues from application fees to be retained by the Commission or otherwise applied to offset the amount to be collected through regulatory fees.

²⁰ See 47 U.S.C. § 159(a)(1) (regulatory fees are assessed and collected “to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities”).

²¹ See U.S. Government Accountability Office, *Federal Communications Commission, Regulatory Fee Process Needs to Be Updated*, GAO-12-686 (August 2012) at 5 (observing that the percentage of the Commission's annual appropriation to be offset with collected regulatory fees has risen from 38% in 1994 when the regulatory fee system was initially implemented to 100% in 2009 and following years).

²² *Procedures for Assessment and Collection of Regulatory Fees and Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Notice of Proposed Rulemaking, MD Docket Nos. 12-201 & 08-65, 27 FCC Rcd 8458, 8467 (2012) at n.19.

²³ See *id.* at 8465-66.

III. THE COMMISSION SHOULD TAKE OTHER STEPS TO IMPROVE ITS INTERNAL PROCESSES

Consistent with the goals of this proceeding, the Commission should adopt additional proposed changes to make its deliberations more transparent and efficient and to explore new approaches to decision-making.

Efficiency: SES fully supports reform to streamline and simplify Commission procedures in order to allow faster action on licensing and regulatory matters. Thus, SES concurs that the Commission should ensure that management and staff are accountable for ensuring that decisions are made on a timely basis, as discussed in **Recommendation 1.3**. Management review of items should be streamlined to reduce related delays (**Recommendation 1.12**), and the Commission should promulgate guidelines to expedite coordination among bureaus when necessary (**Recommendation 1.13**).

To facilitate preparation and release of items, templates reflecting typical terms and conditions should be maintained and used, as proposed in **Recommendation 1.16**. Furthermore, SES supports the review outlined in **Recommendation 2.9** to determine whether additional categories of applications should be eligible for automatic processing.²⁴ As SES has indicated above, auto-grant procedures should be used for *pro forma* assignments and transfers

²⁴ **Recommendation 5.17** suggests that the Wireless Telecommunications Bureau undertake a similar review to consider expansion of automatic processing. SES does not generally object to that proposal but has concerns about one category of filings mentioned in the discussion. Specifically, auto-grant procedures for registrations of terrestrial sites in the 3650-3700 MHz service should be available only if the proposed locations are more than 150 km from any grandfathered earth station. Absent an agreement with the earth station operator, Section 90.1331(a) of the Commission's rules prohibits new 3650-3700 MHz transmitters within the 150 km exclusion zone surrounding a grandfathered earth station. Several years ago, a 3650-3700 MHz applicant inaccurately certified on the registration form that it had entered into such an agreement with SES. Given that experience, SES opposes any extension of auto-grant procedures to 3650-3700 MHz sites located within any earth station's exclusion zone.

of control involving space and earth station licenses if the Commission does not eliminate the prior approval requirement altogether.

SES also agrees with **Recommendation 2.6** that electronic means should be used to communicate with licensees. For example, grants of earth station applications should be sent via e-mail to eliminate the delay associated with the current practice of mailing a paper copy of the authorization.

The Commission should also work with other government agencies to accelerate processing. Specifically, SES supports the proposal in **Recommendation 1.14** that the Commission explore with the National Telecommunications and Information Administration ways to facilitate and expedite review when an item involves shared federal and non-federal spectrum – or even consider whether there are categories of requests where such review could be eliminated altogether. Likewise, the Commission should establish firm timetables for review by Executive Branch agencies of foreign ownership issues, as suggested in **Recommendation 1.15**.

Transparency: SES also endorses many of the Report’s proposals aimed at providing a higher degree of transparency into the Commission’s actions. For example, SES strongly supports **Recommendation 3.8** that absent special circumstances, the text of proposed rules should be included in any Notice of Proposed Rulemaking to ensure that commenters can consider and discuss specific rule changes. SES and other regulated entities would also find additional information regarding staff expertise helpful, as discussed in **Recommendation 4.1**.

SES agrees that information regarding the Commission’s budget and number of full-time equivalent employees should be available on the website, as suggested in **Recommendation 1.7**. This data is relevant to the ongoing review of the Commission’s regulatory fees, and improving accessibility to the information will enhance parties’ ability to fully participate in that proceeding. For similar reasons, we support evaluating and improving

the manner in which decisions on fee inquiries and petitions are made available to the public, as proposed in **Recommendation 5.23**.

Approaches to Decision-Making: Finally, SES agrees that the Commission should consider making expanded use of multi-stakeholder mechanisms and negotiated rulemaking, as set forth in **Recommendations 3.1 and 3.3**. SES and other SIA members have endorsed the Commission's proposal to convene a multi-stakeholder group to analyze technical issues and interference prevention measures in the ongoing proceeding on small cells in the 3.5 GHz band.²⁵ Such an approach may also be useful in other proceedings. Similarly, negotiated rulemaking would involve assembling a number of interested parties to narrow issues and develop proposals before a formal NPRM is issued, with the possibility of reducing burdens on Commission staff. As the Report observes, however, this method can be effective only if all relevant stakeholders are invited to participate.²⁶

IV. CONCLUSION

SES supports the Commission's efforts to undertake a broad review of its processes and urges the Commission to implement the recommendations discussed above.

Respectfully submitted,

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²⁵ See Comments of the Satellite Industry Association, GN Docket No. 12-354, filed Dec. 5, 2013, at 10.

²⁶ Report at 39.