

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of the Application of	)	
	)	
<b>SES Americom, Inc.</b>	)	SAT-MOD-20060929-00113
	)	
For Modification of AMC-16	)	
Fixed Satellite Space Station License	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 22, 2006**

**Released: December 22, 2006**

By the Deputy Chief, International Bureau:

**I. INTRODUCTION**

1. With this Order, we grant SES Americom, Inc.'s (SES Americom) request to extend a previous waiver that allows the AMC-16 Ka-band<sup>1</sup> space station to be away from its authorized 85° W.L. orbital location. We grant the extension of waiver based on the unique circumstances in this case, in particular, the launch associated with the AMC-16 space station. We also deny SES Americom's application insofar as it requests authority to transfer AMC-16's Ka-band space station to operate under the control of Telesat Canada, pursuant to a Canadian license, at the 118.75° W.L. orbital location. SES Americom has not demonstrated any public interest that the transfer would provide that would not be provided through a U.S. authorization.

**II. BACKGROUND**

2. AMC-16 is a geostationary Ku-<sup>2</sup>/Ka-band hybrid satellite originally licensed by the Commission to operate at the 85° W.L. orbital location.<sup>3</sup> In April 2006, the International Bureau granted an application filed by SES Americom for authority needed in connection with the temporary relocation of AMC-16 to the 118.75° W.L. orbital location, and the transfer of control of its Ku-band payload to Telesat Canada, which would operate under authorization from Industry Canada.<sup>4</sup> Operation of AMC-

<sup>1</sup> As used in this *Memorandum Opinion and Order*, the term "Ka-Band" refers to the 18.6-18.8 GHz, 19.7-20.2 GHz, 28.4-28.6 GHz (Earth-to-space), and 29.5-30.0 GHz (Earth-to-space) frequency bands.

<sup>2</sup> As used in this *Memorandum Opinion and Order*, the term "Ku-Band" refers to the 11.7-12.2 GHz (downlink) and 14.0-14.5 GHz (uplink) frequency bands.

<sup>3</sup> See Policy Branch Information, Actions Taken, Public Notice, Report No. SAT-00239, DA 04-2884 (rel. Sept. 3, 2004), disclosing action on File No. SAT-MOD-20040227-00022 (granted Sept. 2, 2004).

<sup>4</sup> SES Americom, Inc. and EchoStar Satellite LLC, *Order and Authorization*, 21 FCC Rcd 3430 (Int'l Bur. 2006) (*AMC-16 Ku-band Order*). See also Information Bulletin, Industry Canada Awards Satellite Licence <<http://www.ic.gc.ca/cmb/Welcomeic.nsf/cdd9dc973c4bf6bc852564ca006418a0/85256a220056c2a485256a7200513218>>

16's Ku-band payload under Canadian authority was the subject of an informal exchange of letters between the Commission and Industry Canada.<sup>5</sup>

3. The request the Bureau granted was filed by SES Americom, but was the result of a request from its customer, EchoStar Satellite, LLC (EchoStar), which has purchased the Ku-band capacity of AMC-16.<sup>6</sup> EchoStar has an agreement with Telesat Canada for Ku-band service from the yet-to-be launched Anik F3 satellite, which will operate at the 118.75° W.L. orbital location.<sup>7</sup> EchoStar stated that its purpose for entering the agreement is to augment the spectrum currently used for direct-to-home (DTH) multi-channel video programming distribution services, including expanded local-into-local,<sup>8</sup> international, high definition television and other programming. The companies had anticipated launch and operation of Anik F3 by late 2006.<sup>9</sup>

4. In order to provide service from the vicinity of the 118.7° W.L orbital location at an earlier date than the commencement of operations of the Anik F3 Ku-band space station, EchoStar requested that SES Americom move AMC-16 to the 118.75° W.L orbital location.<sup>10</sup> EchoStar, SES Americom and Telesat Canada entered into a Memorandum of Agreement concerning operations of the AMC-16 Ku-band space station at the 118.75° W.L. orbital location.<sup>11</sup> In granting SES Americom's application, the Bureau found that grant would allow early commencement of Ku-band direct-to-home service to U.S. customers from an orbital location capable of providing service to the contiguous United States, therefore improving the choice of service to U.S. consumers.<sup>12</sup>

5. At the time of its application concerning AMC-16 and the 118.75° W.L orbital location, SES Americom also relocated AMC-2 to the 85° W.L. orbital location in order to provide Ku-band service there while AMC-16 was relocated. AMC-2, a hybrid C-/Ku-band satellite, is incapable of providing the authorized Ka-band service at the 85° W.L. orbital location. SES Americom stated that it had no other available satellite capable of providing Ka-band service at the 85° W.L. orbital location while AMC-16 was temporarily relocated. Consequently, SES Americom sought a waiver of Section 25.161(c) of the Commission's rules, which provides for automatic termination of authority if service is not operational at

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<sup>5</sup> The letters are attached as Annex A to the *AMC-16 Ku-band Order*.

<sup>6</sup> See Application by SES Americom, Inc. for Modification of AMC-16 Fixed Satellite Space Station License, File No SAT-MOD-20060929-00113 (AMC-16 Ka-band Application) at p. 3.

<sup>7</sup> In 2005, the International Bureau granted EchoStar authority for earth station facilities in the United States to communicate with Anik F3. EchoStar Satellite LLC Application for Blanket Authorization to operate 1,000,000 Receive-Only Earth Stations, *Order and Authorization*, DA 05-3227 (Int'l Bur. 2005) (granting EchoStar a blanket authorization for one million receive-only earth stations to receive Ku-band DTH service from Telesat Canada's Anik F3 space station, licensed by Industry Canada at the 118.7° W.L. orbital location).

<sup>8</sup> The term "local-into-local," as used in this Order, refers to provision via satellite retransmission of local broadcast channels to subscribers who reside in the local TV station's market, which is defined as a Designated Market Area, or "DMA." See 17 U.S.C. § 122 (j)(2)(A).

<sup>9</sup> Telesat Canada Petition for Declaratory Ruling for Inclusion of ANIK F3 on the Permitted Space Station List, *Order*, DA 06-XXXX (Int'l Bur., Sat. Div. 20XX).

<sup>10</sup> The 118.75° W.L. orbital location requested by SES Americom for AMC-16 is within .1 degree of the 118.7° W.L. orbital location assigned to Canada under the *1988 Trilateral Arrangement*. Trilateral Arrangement Regarding Use of the Geostationary Orbit Reached by Canada, Mexico, and the United States, *Public Notice* (Sept. 2, 1988) (*1988 Trilateral Arrangement*). See also International Telecommunication Union (ITU) Radio Regulations Article 22 ( $\pm$  .1 degree station keeping).

<sup>11</sup> SES Americom Application for Modification of the AMC-16 Fixed-Satellite Service Space Station, File No. SAT-MOD-20050621-00132 at pp. 3-4.

<sup>12</sup> *AMC-16 Ku-band Order*, 21 FCC Red at 3431.

an assigned orbital location for over 90 days.<sup>13</sup> In the *AMC-16 Ku-band Order*, the Bureau granted the waiver request because the relocation of AMC-16 was for a short duration with a defined end date, and because the temporary use of the satellite at a different orbital location would facilitate improved service to U.S. customers.<sup>14</sup> Grant of the waiver was conditioned upon AMC-16 returning to the 85° W.L. orbital location no later than December 31, 2006.

6. The launch of Anik F3 and subsequent return of AMC-16 to its authorized location at 85° W.L. was anticipated for the fourth quarter of 2006. SES Americom now states that factors beyond its control have delayed the launch of Anik F3. The Anik F3 is contracted to be launched on an International Launch Services (ILS) Proton M/Breeze M launch vehicle.<sup>15</sup> On February 28, 2006, a Proton M/Breeze M launch vehicle experienced an anomaly and failed to deliver the Arabsat 4A spacecraft to orbit.<sup>16</sup> ILS suspended its launch schedule pending investigation into the cause of the failure, and advised Telesat Canada that a new date would be set for launch of Anik F3. ILS has now resumed launches on Proton, and has set a new launch window for Anik F3, February 27, 2007 to April 27, 2007.<sup>17</sup>

7. SES Americom's application also, in effect, requests authorization that would permit transfer of the AMC-16 Ka-band payload to operation under Telesat Canada's direction and control, pursuant to a Canadian authorization at the 118.75° W.L. orbital location. This request is pursuant to a request by Telesat Canada to SES Americom to use AMC-16's Ka-band payload at the 118.75° W.L. orbital location pending the launch of Anik F3. On September 22, 2006, the Commission granted SES Americom authority to activate the Ka-band payload at that location under special temporary authority (STA).<sup>18</sup> SES Americom ceased Ka-band operations at the 118.75° W.L. orbital location when the STA expired on November 21, 2006.<sup>19</sup>

8. SES Americom's application for modification and transfer of the AMC-16 Ka-band authorization was accepted for filing and placed on public notice.<sup>20</sup> No comments were filed.

### III. DISCUSSION

#### A. Request for Extension of Waiver of Section 25.161(c)

9. Section 25.161(c) of the Commission's rules provides that a space station authorization will automatically terminate if removal of facilities renders the station not operational for over 90 days, unless specific authority is requested.<sup>21</sup> In the *AMC-16 Ku-band Order*, the Bureau granted SES

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<sup>13</sup> 47 C.F.R. § 25.161(c).

<sup>14</sup> *AMC-16 Ku-band Order*, 21 FCC Rcd at 3434.

<sup>15</sup> AMC-16 Ka-band Application at p. 6.

<sup>16</sup> AMC-16 Ka-band Application at Declaration of Trevor Lewis.

<sup>17</sup> *Id.*

<sup>18</sup> See Policy Branch Information, Actions Taken, Public Notice, Report No. SAT-00391, DA 06-1963 (rel. Sept. 29, 2006), disclosing action on Application by SES Americom, Inc. for Special Temporary Authority to Operate the AMC-16 Ka-band Payload at 118.75° W.L., File No. SAT-STA-20060921-00108 (granted Sept. 22, 2006).

<sup>19</sup> SES Americom has requested an additional STA for Ka-band service at the 118.75° W.L. orbital location. That request remains pending. See File No. SAT-STA-20061117-00141.

<sup>20</sup> Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00394 (rel. Oct. 13, 2006).

<sup>21</sup> 47 C.F.R. § 25.161(c).

Americom's request to waive the rule,<sup>22</sup> on the condition that AMC-16 return to the 85° W.L. orbital location no later than December 31, 2006.

10. SES Americom now requests an extension of the waiver to September 30, 2007. SES Americom states that its request is based on launch delays that are beyond its control, and beyond the control of EchoStar and Telesat Canada. SES Americom asserts that grant of the waiver extension request will serve the public interest by ensuring the continuity of Ku-band service to U.S. customers at the 118.75° W.L. orbital location, pending launch and operation of the Anik F3 satellite. SES Americom argues that denial of the extension request would require it to return AMC-16 to the 85° W.L. orbital location, causing service disruption and confusion at the 118.75° W.L. orbital location. SES Americom further asserts that grant of the waiver is consistent with Commission precedent, because it would allow service continuity at the 118.75° W.L. orbital location, and does not raise concerns over warehousing of satellite spectrum.<sup>23</sup>

11. In the *AMC-16 Ku-band Order*, the Bureau indicated that Section 25.161(c) is intended to avoid unacceptable lapses in service to customers and to prevent warehousing of scarce orbit and spectrum resources.<sup>24</sup> In this case, Ka-band service has never been offered commercially at the 85° W.L. orbital location. Thus, allowing AMC-16 to remain at the 118.75° W.L. orbital location will not affect Ka-band customers. Further, there is no lapse in service to AMC-16's Ku-band customer, EchoStar, since EchoStar continues to receive service from the 118.75° W.L. orbital location. Indeed, if we require AMC-16 to relocate to the 85° W.L. orbital location before Anik F3 is launched, service will be disrupted to current Ku-band customers. This benefit to AMC-16's Ku-band customers outweighs any short delay in service to potential Ka-band customers at the 85° W.L. orbital location while AMC-16 remains at 118.75° W.L.

12. The Commission may waive a rule for good cause shown.<sup>25</sup> Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than would strict adherence to the general rule.<sup>26</sup> 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.<sup>27</sup>

13. SES Americom has presented a definite plan for re-initiation of Ka-band service at the 85° W.L. orbital location, and we acknowledge the unforeseen difficulties and delay surrounding the Anik F3 launch. On balance, we find that the continuity of Ku-band service to U.S. customers from the 118.75° W.L. orbital location and the launch difficulties warrant further extending the waiver of rule Section 25.161(c).

14. SES Americom requested extension of the waiver through September 30, 2007. ILS has provided Telesat Canada with a new launch window between February 27, 2007 and April 27, 2007. Once Anik F3 is launched, SES Americom states that Telesat Canada will require approximately 35 days

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<sup>22</sup> *AMC-16 Ku-band Order*, 21 FCC Rcd at 3434.

<sup>23</sup> AMC-16 Ka-band Application at pp. 13-14.

<sup>24</sup> *AMC-16 Ku-band Order*, 21 FCC Rcd at 3434 (citing VisionStar Incorporated, *Memorandum Opinion and Order*, 19 FCC Rcd 14820, 14825 ¶ 12 (Int'l Bur. 2004); and Tempo Satellite, Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 11069, 11072 ¶ 10 (Int'l Bur. 1998)).

<sup>25</sup> 47 C.F.R. § 1.3.

<sup>26</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990).

<sup>27</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, (D.C. Cir. 1969); *Dominion Video Satellite, Inc., Order and Authorization*, 14 FCC Rcd 8182 (Int'l Bur. 1999).

to test the satellite before the hand-off of traffic from AMC-16 to Anik F3, a task that will take an additional five days.<sup>28</sup> Once the hand-off is complete, SES Americom states that it will take 35-45 days for AMC-16 to drift back to the 85° W.L. orbital location, where it can then establish Ka-band service under its authorization. Adding the time to undertake these additional steps, SES Americom anticipates that the AMC-16 space station will be back at the 85° W.L. orbital location between June and August, depending on whether Anik F3 is launched at the beginning or end of its launch window. SES Americom requests extension of the waiver through the end of September in order to build a modest cushion into its return schedule.

15. Although we grant the extension request, we limit the extension to the minimum time necessary to accomplish the return of AMC-16 to its authorized location and the initiation of Ka-band service at that location. We therefore extend the waiver of Section 25.161(c) to a date 80 days following the launch of Anik F3, or July 24, 2007, whichever date is earlier.

### **B. Ka-band Operations under Canadian Authorization**

16. SES Americom's application also, in effect, requests authorization that would permit transfer of the AMC-16 Ka-band payload to operation under Telesat Canada's direction and control, pursuant to a Canadian authorization at the 118.75° W.L. orbital location.<sup>29</sup> SES Americom reports that Industry Canada has already authorized Telesat Canada to use the Ka-band payload on AMC-16 to serve Canada from the 118.75° W.L. orbital location.

17. SES Americom argues that its request will serve the public interest by allowing efficient use of spectrum and orbital resources to provide service to customers. SES Americom acknowledges that the requested Ka-band service is limited to customers in Canada. While SES Americom observes that Telesat Canada's use of the Ka-band payload on AMC-16 could lead to a future request for introduction of Ka-band service to U.S. customers from that location, it is unclear from the record why the transfer of control to Telesat Canada of AMC-16's Ka-band payload serves the public interest.<sup>30</sup> The potential benefits are speculative. Furthermore, SES Americom has provided no basis for concluding that these benefits cannot be achieved through operations under a U.S. authorization. Under the circumstances, we cannot find that grant of this request would serve the public interest. We therefore deny SES Americom's application insofar as it requests authority to transfer control of the Ka-band payload of AMC-16.

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<sup>28</sup> AMC-16 Ka-band Application at p. 7.

<sup>29</sup> AMC-16 Ka-band Application at p. 15.

<sup>30</sup> *Compare AMC-16 Ku-band Order*, 21 FCC Rcd 3430 (service to U.S. DTH subscribers); EchoStar 4 satellite, EchoStar Satellite LLC, *Order and Authorization*, 21 FCC Rcd 4077 (Int'l Bur. Sat. Div. 2006) (potential service to U.S. from a location that would be assigned to Mexico in an ITU "planned" band); DIRECTV 2 satellite, Policy Branch Information, Actions Taken, Public Notice, Report No. SAT-00340, DA 06-194 (rel. Jan. 27, 2006), disclosing action on File No. SAT-STA-20051018-00201 (U.S. satellite transferred in order to provide back-up to established and ongoing Canadian service); DIRECTV 1 satellite, DIRECTV Enterprises LLC, *Order and Authorization*, 20 FCC Rcd 11772 (Sat. Div. 2005) (service to U.S. DTH subscribers from orbital location assigned to Canada in ITU "planned" band); EchoStar 5 satellite, EchoStar Satellite LLC, *Order and Authorization*, 20 FCC Rcd 11755 (Int'l Bur. Sat. Div. 2005) (service to U.S. DTH subscribers from orbital location assigned to Canada in ITU "planned" band); DIRECTV 5 satellite, DIRECTV Enterprises LLC, *Order and Authorization*, 19 FCC Rcd 15529 (Int'l Bur. Sat. Div. 2004) (service to U.S. DTH subscribers from orbital location assigned to Canada in ITU "planned" band); DIRECTV 3 satellite, DIRECTV, Inc., *Order*, 19 FCC Rcd 11055 (Int'l Bur. Sat. Div. 2004) (U.S. satellite transferred in order to provide back-up to established and ongoing Canadian service); Galaxy III-R satellite, File No. SAT-STA-20030609-00099 (U.S. satellite transferred in order to avoid disruption to long-established Canadian Ku-band service, at location and frequencies coordinated under the 1988 Trilateral Arrangement).

**IV. ORDERING CLAUSES**

18. IT IS ORDERED that SES Americom, Inc.'s request to waive Section 25.161(c) of the Commission's rules, 47 C.F.R. § 25.161(c), is GRANTED. SES Americom, Inc. shall continue to be authorized to operate AMC-16 in Ka-band frequencies at the 85° W.L. orbital location, and shall resume those operations upon the relocation of the AMC-16 satellite to that location, by a date 80 days following the launch of Anik F3, or July 24, 2007, whichever date is earlier. If SES Americom, Inc. does not resume operating in Ka-band frequencies at the 85° W.L. orbital location by that date, the authorization for Ka-band authority at the 85° W.L. orbital location will be automatically terminated.

19. IT IS FURTHER ORDERED that the request to transfer control of the AMC-16 Ka-band payload is DENIED.

20. SES Americom, Inc. is afforded thirty days to decline these authorizations as conditioned. Failure to respond within this period will constitute formal acceptance of the authorizations as conditioned.

21. This Order is issued pursuant to authority delegated in Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Roderick K. Porter  
Deputy Chief  
International Bureau