COMMENTS OF SES GLOBAL-AMERICAS, INC., TO THE DEPARTMENT OF COMMERCE, BUREAU OF INDUSTRY AND SECURITY REGARDING SPACECRAFT SYSTEMS AND RELATED ITEMS NEWLY CONTROLLED BY THE COMMERCE CONTROL LIST

SES Global-Americas, Inc. ("SES GA"), hereby files its comments in response to the U.S. Department of Commerce, Bureau of Industry and Security's notice of proposed rulemaking concerning the proposed treatment under the Commerce Control List ("CCL") of spacecraft systems and related technology that the President determines no longer warrant control under United States Munitions List Category XV.[1]

As an initial matter, SES GA appreciates the work that the Administration, through the Departments of Commerce and State, has put into developing the comprehensive proposed regulations. The ultimate benefits to U.S. satellite operators and manufacturers have the potential to be significant, and SES GA supports the overall proposal.

SES GA is an indirect subsidiary of SES S.A., a Luxembourg global satellite operator. Through its wholly-owned subsidiaries, SES Americom, Inc., SES Engineering (US), Inc. and SES Government Solutions, Inc., SES GA provides commercial communications satellite capacity to commercial and government end-users. As a member of the SES group of companies (the "SES Group"), SES GA has the benefit of access to the SES fleet of 53 satellites to offer such services. And as part of the SES Group, staff from subsidiaries such as SES Engineering (US), Inc. must regularly work collaboratively with their colleagues outside of the U.S. to plan and procure future satellites, safely operate existing satellites and ground stations and respond to technical issues that may arise. For the last several years, SES GA has been able to support this collaboration through an intra-group technical assistance agreement ("TAA") approved by the State Department under the International Traffic in Arms Regulations ("ITAR") that authorizes the transfer of a broad scope of technical data and defense services across SES' fleet to numerous entities within the SES Group. While the intra-group TAA has eased the burden of obtaining authority for each activity that SES engineers may need to engage in, the administrative burden associated with compliance with the TAA's conditions, such as reviewing documents proposed for transfer and maintaining records of each transfer, is high.

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[1] *See* Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML), 78 Federal Register 31431 (2013).

Application of the STA License Exception to "Technology"

Because the majority of SES entities that SES GA cooperates with are located in NATO countries (*e.g.*, Luxembourg and The Netherlands), the application of the Strategic Trade Authorization license exception ("License Exception STA") to technology related to the design, production and operation of commercial communications satellites would greatly reduce the administrative burden. The Commerce Department's proposed rules, however, do not clearly indicate whether such technology may be eligible for License Exception STA. Specifically, under the proposed rule, paragraph (c)(1) of License Exception STA may not be used for ECCN 9E515.b technology and paragraph (c)(2) of License Exception STA may not be used for *any* technology in ECCN 9E515. But ECCNs 9E515.a and 9E515.b appear to overlap. ECCN 9E515.a applies to "'[t]echnology' 'required' for the 'development,' 'production,' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 9A515, 'equipment' controlled by 9B515, or 'software' controlled by 9D515."[2] ECCN 9E515.b applies to "'[t]echnology' (other than 'build-to-print technology') 'required' for the 'development,' 'production,' design, verification, manufacturability, or quality control for items in ECCN 9A515, except items in ECCN 9A515.b [certain ground control systems and training simulators]."[3] Since both ECCN 9E515.a and 9E515.b include technology required for the "development" and "production" of 9A515 satellites, SES GA is unable to determine which "development" and "production" technology may be eligible for paragraph (c)(1) of License Exception STA. SES GA, therefore, requests clarification of the definitions of "technology" under ECCNs 9E515.a and 9E515.b of the proposed rule and how they will be treated for License Exception STA.

SES also recommends that BIS clarify that certain types of data required for establishing compatibility and connectivity between satellite-based communications transponders and ground-based communications antennas are *not* controlled under ECCN 9E515. For example, satellite operators regularly provide ground system operators with "link budget" data related to the operating and performance specifications of the satellite transponders to enable the ground system operators to establish communications connections. Link budget data generally includes transponder performance specifications such as broadcast frequencies, carrier information, power levels, gain and loss levels, and noise levels. Although such information relates to the operation of the satellite-based transponders, it is also required for the operation of the ground-based antennas that are not currently subject to the ITAR. The State Department previously has taken the position that these categories of data are not subject to the ITAR. (*See* State Department commodity jurisdiction case CJ-008-00.) Similarly, raw satellite telemetry data, without further processing, generally is not sufficient or useful for conducting satellite operations. For these reasons, SES believes that such link budget data, raw telemetry data, and other types of data required for connectivity with ground-based communications systems should not be controlled under ECCN

[2] Proposed ECCN 9E515, 78 Federal Register at 31443.
[3] *Id.*

9E515. In order to facilitate a clear and consistent understanding of the types of data controlled under this new ECCN, SES respectfully requests that BIS clarify these points in the final rule.

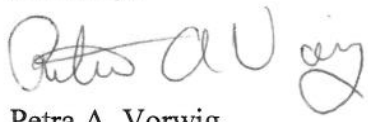
Licensing for Technology Exports Outside of the License Exception STA

For technology that will not be eligible for License Exception STA, SES GA requests clarification regarding how the Commerce Department will license the transfer of technology on a similar scope to the intra-group TAAs that the State Department has issued. For example, will BIS issue single broad technology licenses similar in scope to TAAs currently approved by the State Department for ongoing, collaborative work among affiliated U.S. and foreign entities across multiple satellite programs? In contrast, if U.S. exporters will be required to obtain a separate export license for each activity involving foreign affiliated entities, or even just for each satellite program, the administrative time and expense would increase significantly, thereby reducing SES GA's ability to provide efficient satellite service.

Finally, SES GA requests clarification on whether the Commerce Department will continue to apply on its export licenses the limitations that are now often included in TAA provisos. For example, TAA approvals for activities related to satellite in-orbit support often include a proviso that prohibits the U.S. licensee from engaging in satellite anomaly resolution activities with the non-U.S. parties. Because the Administration has determined that the satellites on the CCL do not pose a significant military risk, SES GA believes that the rationale for prohibiting satellite anomaly resolution activities no longer exists. Rather, such activities should be considered to be activities related to satellite operations that are eligible for export under License Exception STA or specific licenses issued by BIS.

SES GA applauds the work that the Departments of Commerce and State have put into overhauling the U.S. export control of commercial satellites and it looks forward to the anticipated improvements in efficiencies and reduction in costs.

Sincerely,



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