

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

---

In the Matter of: )  
)  
)  
)

**DIRECTV ENTERPRISES, LLC** )

To Amend its Pending Application for a )  
17/24 GHz BSS Authorization at the )  
Nominal 107° W.L. Orbital Location )  
)  
)  
)  
)

File Nos. SAT-LOA-19970605-00049  
SAT-AMD-20051118-00226  
SAT-AMD-20080114-00015  
SAT-AMD-20080916-00188  
Call Sign S2242

**REPLY COMMENTS**

EchoStar Corporation (“EchoStar”) replies to the Response filed by DIRECTV Enterprises, LLC (“DIRECTV”) on November 10, 2008,<sup>1</sup> as well as two brief letters filed by Intelsat North America LLC (“Intelsat”) and Pegasus Development DBS Corporation (“Pegasus”).<sup>2</sup>

DIRECTV tries to set up a strawman to shoot at by presenting EchoStar’s objections as broader than they in fact are. To be clear, there are neither legal nor policy issues with Intelsat’s decision to drop its application at 99° W.L., or with Pegasus’s decision to drop its application at 91° W.L. Nor has EchoStar registered concern with the objective of the three parties to

---

<sup>1</sup> Response of DIRECTV Enterprises, LLC, File No. SAT-AMD-20080916-00188 (filed Nov. 10, 2008) (“Response”).

<sup>2</sup> See Letter from Susan H. Crandall, Assistant General Counsel, Intelsat Corp. to Marlene H. Dortch, Secretary, FCC, *filed in* File No. SAT-AMD-20080916-00188 (filed Nov. 12, 2008); Letter from Bruce D. Jacobs and Tony Lin, Counsel for Pegasus Development DBS Corp., to Marlene H. Dortch, Secretary, FCC, *filed in* File No. SAT-AMD-20080916-00188 (filed Nov. 10, 2008).

“rationalize” 17/24 GHz BSS band with a single applicant per slot wherever feasible. Rather EchoStar’s objections are focused on the proposed assignment of DIRECTV’s pending application at 107° W.L. to Pegasus. That part of the three applicants’ “Rationalization Agreement” raises legal and policy problems, requires rule waivers for which no good cause is apparent, would prejudice EchoStar by consigning it to one third of a slot occupied by two companies, and illustrates the inefficiencies of a partial settlement that excludes one applicant.

Further demonstrating the irregular character of its request, DIRECTV asks that Pegasus and itself be treated, variously, as one (for purposes of determining the number of performance bonds), and as two (for purposes of spectrum computation). DIRECTV, Pegasus, and EchoStar each have a pending application for 17/24 GHz BSS spectrum at the 107° W.L. orbital location. Pursuant to the *17/24 GHz BSS* orders, the three applications are considered simultaneously filed and mutually exclusive.<sup>3</sup> As a result, under the Commission’s rules,<sup>4</sup> each applicant would ordinarily receive one-third of the spectrum that is the subject of all three applications.<sup>5</sup> DIRECTV is attempting to give its one-third to Pegasus, yet the rules do not provide an avenue for doing so. Not only are assignments of places in the satellite queue forbidden,<sup>6</sup> but, as EchoStar has previously noted, the Commission’s rules require satellite spectrum that is the subject of multiple mutually exclusive applications to be divided evenly

---

<sup>3</sup> See *17/24 GHz BSS Report and Order*, 22 FCC Rcd 8842, at ¶ 143 (2007); *17/24 GHz BSS Order on Reconsideration*, 22 FCC Rcd 8842, at ¶ 33 (2007).

<sup>4</sup> See 47 C.F.R. § 25.158(d)(4).

<sup>5</sup> To be precise, the 400 MHz of spectrum in the 17.3-17.7 GHz band would be split one-third each among EchoStar, DIRECTV and Pegasus because all three have applied for that spectrum. In contrast, the 100 MHz of spectrum in the 17.7-17.8 GHz band would only be split two ways among EchoStar and Pegasus because DIRECTV has conceded that it did not apply for that spectrum. See Response at 6.

<sup>6</sup> 47 C.F.R. § 25.158(c).

among the number of *applicants* rather than the number of *applications*.<sup>7</sup> DIRECTV ignores this latter rule and insists instead that its 107° W.L. application be treated separately for purposes of spectrum division, even after the application is assigned to Pegasus, to ensure that Pegasus receives two-thirds of the spectrum at 107° W.L. This contrasts sharply with how DIRECTV and Pegasus are asking the Commission to treat the two applications when it comes to the performance bonds that they must post once the applications are granted. For that purpose, DIRECTV and Pegasus seek to be viewed as a single entity at 107° W.L. in order to avoid having to make two bond payments. DIRECTV and Pegasus cannot have it both ways, and have failed to offer a clear explanation of these issues in their filings.

DIRECTV dedicates the bulk of its filing to an attempt to portray EchoStar as an obstructionist.<sup>8</sup> This charge does not withstand scrutiny, as EchoStar readily agrees that DIRECTV and the other two applicants at the split 17/24 GHz BSS slots are under no obligation to seek a global solution to rationalize all of the split 17/24 GHz BSS slots.<sup>9</sup> But the failure to even attempt to negotiate a global solution is relevant to DIRECTV's waiver requests, which

---

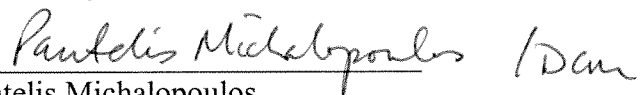
<sup>7</sup> See EchoStar Corporation, Comments at 7-8, filed in File Nos. SAT-AMD-20080916-00188 (filed Oct. 27, 2008). See also 47 C.F.R. § 25.158(d)(4) (requiring equal division among the mutually exclusive licensees); *First Space Station Licensing Reform Order*, 18 FCC Rcd 10760, at ¶ 135 (requiring spectrum to be divided “evenly among the applicants in cases where two or more applicants file mutually exclusive applications at the same thousandth of a second”) (emphasis added); *17/24 GHz BSS Report and Order* at ¶ 143 (“where two or ore applications are mutually exclusive, we will divide the available spectrum equally among the applicants”); *17/24 GHz BSS Order on Reconsideration* at ¶ 33 (“In the event two or more applicants requested authority to operate at the same orbital location, we directed the Bureau to consider the applications concurrently and, if the applicants were qualified, to license them to operate in an equal portion of the spectrum.”).

<sup>8</sup> Response at 2-5.

<sup>9</sup> In this regard, EchoStar has never suggested that DIRECTV would have to drop two applications in order to make a global solution work. Any number of different variables or proposed slot divisions could have been considered in global negotiations between the four parties.

require a good cause showing and a demonstration that the proposed Rationalization Agreement is in the public interest.<sup>10</sup> A demonstration that all affected parties were consulted and an effort to achieve a global and equitable fix to the split 17/24 GHz BSS slots would obviously weigh in favor of a waiver. But an arrangement (such as the one proposed) under which DIRECTV would receive all the spectrum at one of its two core slots and which leaves its primary competitor with two encumbered orbital slots would not. But for DIRECTV's waiver and clarification requests, EchoStar would be entitled to half of the 17/24 GHz BSS spectrum at 107° W.L. rather than one-third. Thus, the practical effect of DIRECTV's request is to strip EchoStar of spectrum rights. This is certainly in the private interests of DIRECTV and Pegasus, but it is not in the public's interest.

Respectfully submitted,



Pantelis Michalopoulos  
Chung Hsiang Mah  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-3000  
*Counsel for EchoStar Corporation*

Linda Kinney  
Vice President, Law and Regulation  
Brad Gillen  
Director and Senior Counsel  
**EchoStar Corporation**  
1233 20th Street, N.W., Suite 302  
Washington, DC 20036-2396  
(202) 293-0981

November 24, 2008

---

<sup>10</sup> See 47 C.F.R. § 1.3.

**CERTIFICATE OF SERVICE**

I, Chung Hsiang Mah, hereby certify that on November 24, 2008, I caused true and correct copies of the foregoing to be served on the following by first-class mail:

William M. Wiltshire  
Harris, Wiltshire & Grannis LLP  
1200 Eighteenth Street, N.W.  
12th Floor  
Washington, D.C. 20036-2506  
*Counsel for DIRECTV Enterprises LLC*

Tony Lin  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, N.W.  
Washington, D.C. 20037-1122  
*Counsel for Pegasus Development  
DBS Corporation*

Susan Crandall  
Intelsat North America LLC  
3400 International Drive, N.W.  
Washington, D.C. 20008-3006  
*Counsel for Intelsat North America LLC*

  
\_\_\_\_\_  
Chung Hsiang Mah