

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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In the Matter of: )  
)  
**DISH OPERATING L.L.C.** ) File Nos.: SAT-MOD-20100329-00058  
) SAT-AMD-20100610-00127  
)  
Application for Minor Modification of )  
Authority to Allow Operation of EchoStar 7 )  
at 118.8° W.L. )  
)  
*and* ) Call Sign: S2740  
)  
)  
Amendment to Application for Minor )  
Modification of Authority to Allow )  
Operation of EchoStar 7 at 118.8° W.L. )  
)  
)  
)  
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**PETITION TO DISMISS OR DENY**  
**AMENDMENT TO APPLICATION AND APPLICATION**

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August 2, 2010

## **SUMMARY AND INTRODUCTION**

DISH Operating L.L.C. (“DISH”) has filed a purported Amendment to its Application to provide Direct Broadcast Satellite service from EchoStar 7 at the 118.8° W.L. orbital location.<sup>1</sup> Because the underlying Application was defective, and a defective application cannot be amended, the Application and Amendment should be dismissed or denied. Even if a defective application could be amended, the Amendment neither satisfies the orbital debris mitigation requirements nor addresses the other concerns raised in connection with Spectrum Five’s Petition To Dismiss or Deny the underlying Application.<sup>2</sup>

### **I. DEFECTIVE SPACE STATION APPLICATIONS CANNOT BE AMENDED.**

The Application was defective because it did not contain an orbital debris mitigation assessment required by Section 25.114(d)(14)(iii). *See* Petition at 6-13; Reply at 3-5. “Amendments to ‘defective’ space station applications . . . will not be considered.” 47 C.F.R. §§ 25.112(a), 25.116(b)(5); *see* Reply at 5-6. Moreover, a materially defective application cannot be fixed by submitting information in response to a request by the Bureau. *See* Reply at 6-9. DISH does not claim that the Commission’s requirement to prepare a complete orbital debris mitigation assessment was “ambiguous” or in need of clarification. *See id.* at 8-9. Further, the

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<sup>1</sup> Application, *In re DISH Operating L.L.C. Application for Minor Modification of Authority To Allow Operation of EchoStar 7 at 118.8° W.L.*, File No. SAT-MOD-20100329-00058, Call Sign S2740 (filed Mar. 29, 2010) (“Application”); Amendment to Application for Minor Modification, *In re DISH Operating L.L.C. Amendment to Application for Minor Modification of Authority To Allow Operation of EchoStar 7 at 118.8° W.L.*, File Nos. SAT-MOD-20100329-00058, SAT-AMD-20100610-00127, Call Sign S2740 (filed June 10, 2010) (“Amendment”).

<sup>2</sup> Spectrum Five LLP hereby incorporates by reference the Petition To Dismiss or Deny, *In re DISH Operating L.L.C. Application for Minor Modification of Authority To Allow Operation of EchoStar 7 at 118.8° W.L.*, File No. SAT-MOD-20100329-00058, Call Sign: S2740 (filed May 17, 2010) (“Petition”), and the Reply in Support of Petition To Dismiss or Deny, *In re DISH Operating L.L.C. Application for Minor Modification of Authority To Allow Operation of EchoStar 7 at 118.8° W.L.*, File No. SAT-MOD-20100329-00058, Call Sign: S2740 (filed June 4, 2010) (“Reply”).

Application did not make a substantial “attempt to demonstrate” compliance. *See id.* Thus, the Bureau must reject the Amendment.

## **II. THE AMENDMENT DOES NOT CURE THE DEFECTS IN THE UNDERLYING APPLICATION.**

Even if the Amendment could be considered, the Application (as amended) should still be dismissed or denied because it would remain materially incomplete and defective. Although DISH now recognizes that Spectrum Five has a pending application to operate a satellite at the 118.8° W.L. orbital location, the Amendment does not meaningfully address how DISH intends to physically coordinate with Spectrum Five’s satellite. The Amendment states that if a “risk develops in the future,” DISH will request authority to drift EchoStar 7 to another location.<sup>3</sup> But Section 25.114(d)(14)(iii) requires operators to plan ahead so that the Commission may assess orbital debris risks in advance of approval.<sup>4</sup> The Amendment does not identify any concrete, physical coordination solutions, much less “provide an assessment of feasibility for these proposed measures.”<sup>5</sup> Nor is the Amendment responsive to the other defects in the underlying Application. *See* Petition at 15-20; Reply at 10-13.

### **CONCLUSION**

For the reasons stated above, the Application and Amendment should be dismissed or denied.

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<sup>3</sup> Amendment, Attachment A, § A.10.3.

<sup>4</sup> Second Report and Order, *In re: Mitigation of Orbital Debris*, 19 FCC Rcd. 11567, ¶ 14 & n.55 (rel. June 21, 2004).

<sup>5</sup> Letter from Robert G. Nelson, Associate Chief, Satellite Division, International Bureau, to Bruce D. Jacobs and Tony Lin, Pillsbury Winthrop Shaw Pitman LLP, *filed in In re: Pegasus Development DBS Corp. Authority to Construct, Launch, and Operate a Broadcasting-Satellite Service System*, File No. SAT-LOA-20090807-00084, Call Sign S2795 (dated Apr. 15, 2010).

Respectfully submitted,

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August 2, 2010

**CERTIFICATE OF SERVICE**

I, Howard W. Waltzman, hereby certify that on this 2nd day of August, 2010, I caused to be hand-delivered a true copy of the foregoing upon the following:

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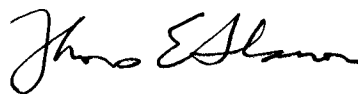
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s/s Howard W. Waltzman  
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**DECLARATION OF TOM SHARON**

I, Tom Sharon, hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I have personal knowledge of such allegations of fact as contained therein (except for those matters of which official notice may be taken). *See* 47 C.F.R. § 25.154(a)(4).

Executed on August 2, 2010, in Duluth, Ga.



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