

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

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In the Matter of)	
)	
DISH OPERATING L.L.C.)	File No. SAT-MOD-20100329-00058
)	File No. SAT-AMD-20100610-00127
Application for Minor Modification of)	Call Sign S2740
Authority To Allow Operation of EchoStar 7)	
at 118.8° W.L.)	
_____)	

OPPOSITION TO PETITION TO DISMISS OR DENY

Pursuant to Section 25.154(c) of the Commission’s rules, DISH Operating L.L.C. (“DISH”) submits this opposition to Spectrum Five LLC’s (“Spectrum Five”) Petition to Dismiss or Deny¹ in the above-captioned proceedings.² As a housekeeping matter, and to facilitate both EchoStar 14’s operations and its co-existence with DIRECTV at the 119° W.L. cluster, DISH has requested minor modification authority to locate its EchoStar 7 satellite at 118.8° W.L. It has also amended this application to add an orbital debris mitigation statement. Spectrum Five had requested denial of the modification application. Now it requests denial of both the application and the amendment (though its petition is not a timely request for the former purpose).

Spectrum Five makes two claims. First, Spectrum Five claims that the underlying modification was defective and such an application cannot be amended. This argument should be rejected, however, because if DISH’s application had been defective it would have been

¹ Spectrum Five LLC, Petition of Spectrum Five LLC to Dismiss or Deny, *filed in* File Nos. SAT-MOD-20100329-00058, SAT-AMD-20100610-00127 (filed Aug. 2, 2010) (“Spectrum Five Petition”).

² See File No. SAT-AMD-20100610-00127 (filed June 10, 2010) (“DISH Amendment”).

returned to DISH. In addition, the Direct Broadcast Satellite spectrum in question, 21 channels at the 119° W.L. cluster, is already licensed to DISH, and DISH is free to file modification and amendment requests to achieve better and more efficient use of that spectrum. Second, Spectrum Five claims that the orbital debris mitigation plan that DISH submitted in response to a request from the Bureau “does not identify any concrete, physical coordination solutions” to protect the satellite that Spectrum Five may build in the future for 118.8° W.L. This argument should also be rejected because it requests DISH provide more information than is required by the rule.

I. DISH’S MINOR MODIFICATION APPLICATION IS NOT DEFECTIVE

The Bureau has not deemed DISH’s Modification Application defective; therefore, DISH is free to amend the application as needed. Section 25.112(a)(1) of the Commission’s rules explain that “[a]n application will be unacceptable for filing and will be returned to the applicant with a brief statement identifying the omissions or discrepancies if . . . [t]he application is defective with respect to completeness of answers to questions, informational showings, internal inconsistencies, execution, or other matters of a formal character.” 47 C.F.R. § 25.112(a)(1). In other words, if DISH’s Modification Application was defective, then the Bureau would have returned it stating as much. The policy behind this rule is to require the application to be “substantially complete” when filed.³

The Bureau, however, did not return the application, but rather requested additional information. The application, therefore, can be assumed to be “substantially complete.” The Bureau merely requested clarifying information from DISH “in order to facilitate processing of

³ See Letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, to Daniel C. H. Mah, Vice President, Regulatory Affairs, SES Americom Inc., at n.2 (rel. July 2, 2010), filed in IBFS File No. SAT-MOD-20100525-00110 (“[T]he Commission affirmed the policies embodied in [§ 25.112(a)] by continuing to require applications to be substantially complete when filed.”).

the application.”⁴ Section 25.111(a) permits the Commission to request such additional information concerning an application.⁵ As the Bureau has explained, the staff may simply ask the applicant “to clarify and to reformat certain information contained in the application.”⁶

For example, when Loral Skynet Network Services, Inc. (“Loral”) filed an application to modify a licensed earth station to add a foreign satellite as a new point of communication, the Bureau requested that Loral clarify several elements of the application. Specifically, the Bureau requested that Loral explain the relationship between the names of the satellite and the satellite payloads; list the emissions added and include frequency band, polarization, power, and power density; list the existing emissions for which Equivalent Isotropically Radiated Power (“EIRP”) and EIRP density are being changed; state the values of the correct coordinates and current coordinates; and identify the responses to requirements for earth stations operating with non-U.S. licensed space stations.⁷ In requesting this information, however, the Bureau found that “Loral’s application was substantially complete when filed, in that Loral provided all the information required by the Commission’s rules.”⁸

⁴ See E-mail from Karl Kensinger, Associate Chief, Satellite Division, FCC International Bureau, to Howard Waltzman and Brian Wong, Mayer Brown (May 18, 2010) *filed in* File No. SAT-MOD-20100329-00058.

⁵ 47 C.F.R. § 25.111(a).

⁶ *In re EchoStar Satellite LLC Application for Authority to Construct, Launch, and Operate a Geostationary Satellite in the Fixed Satellite Service Using the Extended Ku-Band Frequencies at the 101 W.L. Orbital Location*, Order on Reconsideration, 19 FCC Rcd. 24,953, ¶ 16 (rel. Dec. 27, 2004). (“*EchoStar Reconsideration Order*”).

⁷ Letter from William Howden, Chief, Systems Analysis Branch, Satellite Division, Int’l. Bur., FCC to Stan Edinger, Manager-Government Relations, Loral Skynet Network Services, Inc. (Oct. 16, 2004).

⁸ *EchoStar Reconsideration Order*, ¶ 16.

Here too, DISH provided all the information required by the Commission's rules in its modification application. The orbital debris mitigation statement was not required in these circumstances as demonstrated in DISH's original Modification Application.⁹ DISH only later provided the statement upon the Bureau's request in an amendment. Accordingly, the application was properly amended pursuant to Section 25.116 of the Commission's rules, 47 C.F.R. § 25.116.

In addition, Spectrum Five's argument would lead to absurd results. DISH, after all, holds the licenses to use channels 1-21 at the 119° W.L. cluster.¹⁰ DISH is free to file modification and amendment requests regarding that licensed spectrum. If DISH could not lodge an amendment to a prior request regarding this spectrum, it would be barred permanently from making necessary updates and adjustments to its satellite fleet for the purpose of using more efficiently the channels licensed to it. Such a bar would not be in the public interest.

II. THE ORBITAL DEBRIS MITIGATION STATEMENT INCLUDES ALL REQUIRED INFORMATION

Spectrum Five also claims that DISH's orbital debris mitigation plan "does not meaningfully address how DISH intends to physically coordinate with Spectrum Five's satellite;"¹¹ however, this is not correct. DISH has stated that it expects to be able to coordinate with Spectrum Five to ensure sufficient physical separation.¹² In the event coordination is unsuccessful or other risks develop, DISH has asserted that it will drift the satellite to another

⁹ See File No. SAT-MOD-20100329-00058, at 3-5.

¹⁰ See *In re EchoStar Satellite Corp., Application for Minor Modification of Direct Broadcast Satellite Authorization, Launch and Operating Authority for EchoStar 7*, 17 FCC Rcd. 894, ¶ 1 (rel. Jan. 16, 2002).

¹¹ Spectrum Five Petition, at 3.

¹² DISH Amendment, Attachment A, at 4.

portion of the 119° W.L. orbital cluster under separate Commission authority.¹³ Therefore, DISH has met the Section 25.114(d)(14)(iii) requirement to identify “known satellites located at, or reasonably expected to be located at, the requested orbital location, or in the assigned vicinity of that location” and to describe the “measures that will be taken to prevent collision.”¹⁴

III. CONCLUSION

For the foregoing reasons, DISH requests that the Bureau reject Spectrum Five’s Petition to Dismiss or Deny DISH’s amendment to its application for a minor modification of its authority to operate EchoStar 7 at 118.8° W.L. and, in turn, expeditiously grant the application.

Respectfully submitted,

DISH Operating L.L.C.

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¹³ *Id.*

¹⁴ 25 C.F.R. § 25.114(d)(14)(iii).

CERTIFICATE OF SERVICE

I certify that on this 12th day of August, 2010, I caused to be delivered a copy of the foregoing upon the following:

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DECLARATION OF DARREN HAMILTON

I, Darren Hamilton, hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on August 12, 2010.



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