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JUN 13 2005

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

Federal Communications Commission
Office of Secretary

JUN 20 2005

Policy Branch
File No. SAT-10A-20030609-00113
International SAT-10A

In the Matter of)
)
EchoStar Satellite L.L.C.)
)
Application to Construct, Launch &)
Operate a DBS Satellite ("DBS"))
At the 86.5° W.L. Orbital Location)

REPLY OF TELESAT CANADA

Telesat Canada ("Telesat") hereby files its response to the Consolidated Reply to Oppositions and Comments of EchoStar Satellite L.L.C. ("EchoStar") in the above captioned proceeding. In that Reply, EchoStar appears to suggest that, given the disruptive interference concerns raised by other parties, Telesat included, its Application to use the 86.5° W.L. orbital position for DBS service should no longer be considered on its own but instead folded into a broader rulemaking addressing so-called "tweener satellite issues", should the Commission decide to initiate such a proceeding. Telesat welcomes EchoStar's apparent acknowledgment that its Application to use the 86.5° W.L. DBS position is premature, but remains of the view that the EchoStar Application should be denied outright.

EchoStar observes that, in the Telesat Opposition to its Application, the concerns expressed over a DBS satellite located at 86.5° W.L. relate to the ability of consumers to utilize dual-feed antennas with the existing Telesat DBS satellites at the 82° and 91° W.L. positions. And while EchoStar found that "... these concerns do illustrate the benefit of proceeding by means of a rulemaking on the questions related to 4.5° degree orbital spacing" – instead, apparently, of considering this Application on the strengths of its own merits or lack thereof – EchoStar merely states that these concerns could be addressed by a coordination condition "so long as the plans of Telesat and ExpressVu do not implicate use of 'triple-feed' antennas." (EchoStar at 2) Later on that same page, EchoStar further observes that "[n]either Telesat nor ExpressVu mentions any plan to use triple-feed antennas", and then concludes:

"Nevertheless, EchoStar believes that the concerns raised by Telesat and ExpressVu regarding interference to existing Canadian DBS operations, further

underscore the need for the Commission to initiate a rulemaking on the tweener satellite issues to determine among other things, whether the interference that may be caused by tweener satellites into existing DBS networks would be acceptable and if so, whether technical rules can be established to ensure that these satellites do not limit the ability of existing DBS providers to take advantage of such innovations as triple-feed antennas. If the Commission does initiate such a rulemaking proceeding, EchoStar believes that its scope could appropriately encompass the issue of whether a DBS satellite at the 86.5° W.L. orbital location can be compatibly operated with existing DBS satellites.” (EchoStar at 2-3)

In response, Telesat would first note that, if EchoStar believed that the “dual-feed antenna” issue could be simply resolved by a coordination condition, it is curious that they would go on to state that these concerns “underscore the need” for the Commission to initiate a comprehensive rulemaking proceeding. Indeed, as Telesat observed in its Opposition at page 4, on March 31, 2005, EchoStar itself acknowledged in a letter to the Commission that “upon further study, 4.5° spacing between U.S. DBS satellites raises certain technical difficulties, especially for ‘multiple feed’ earth station dishes (*i.e., those designed to receive programming feeds from more than one satellite at a time*).”¹ (emphasis added) This describes exactly the situation Telesat and Bell ExpressVu are in with the current Nimiq DBS satellites at 82° and 91° W.L.²

It is also common knowledge in the industry that Telesat was awarded the Canadian authorization for development of the 72.5° W.L. DBS position in December 2003 and is currently operating an interim satellite in that position to allow the U.S. service provider DirecTV to provide a DTH services into the U.S., until a new satellite can be constructed and placed into service at that position by the end of 2008. One of the Industry Canada Conditions of Licence for Telesat to use this position requires that a minimum of 50 percent of the capacity on the new satellite be retained for Canadian broadcasting undertakings until the launch of that satellite, and that Telesat initiate a call for interest to determine Canadian needs for this retained capacity.³ It stands to reason that a Canadian broadcasting licensee will have an interest in obtaining at least a portion of this additional capacity at 72.5° W.L. to use in conjunction with the networks at the

¹ EchoStar letter to FCC Re: Report No. SPB-196 – Reduced Spacing Between U.S. DBS Satellites (dated Mar. 31, 2005).

² Furthermore, these satellites have been designed to provide coverage of the U.S. and have been approved by the Commission for the delivery of DTH services within the U.S. See *Digital Broadband Applications Corp.*, Order, DA 03-1526 (May 7, 2003) File No. SES-LIC-20020109-00023.

³ See Condition 3 c) of the Industry Canada *Conditions of Licence for Telesat Canada (Telesat) 12 GHz BSS Satellite Operating at 72.5°W Orbital Position*, posted on Industry Canada’s Strategis website at <http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/en/sf01879e.html#ApprovalsInPrinciple>.

91°/82° W.L. positions, thus making a "triple-feed" antenna network a very real possibility. By EchoStar's own admission, the ability to successfully coordinate a tweener satellite network in these circumstances is questionable:

"EchoStar specifically argued [in connection with the Spectrum Five Petition for a Declaratory Ruling to serve the U.S. market using BSS spectrum from the 114.5° W.L. location] that the potential benefits from 4.5° orbital spacing depend on a crucial assumption – that there would be no potential for unacceptable levels of interference from these so-called 'tweener' satellites to existing U.S. DBS networks and their millions of subscribers. EchoStar further pointed out that recent developments, including the increasing importance of 'triple-feed' DBS antennas to U.S. DBS consumers, have brought that assumption into serious question." (EchoStar at 2)

Other EchoStar comments in the parallel Spectrum Five tweener application proceeding are similarly revealing. For example, EchoStar states at page 3 in its Opposition to the Spectrum Five application⁴ that it recently withdrew its own pending applications for two tweener satellites at the 96.5° and 123.5° orbital locations because of these types of interference concerns, but in a footnote states that it did not withdraw its tweener application for the 86.5° W.L. position "because there are no U.S. DBS satellites within 4.5 degrees of this location".⁵ It is true that there are no U.S. DBS satellites within 4.5 degrees of this location – rather there are two Telesat Canadian-licensed DBS satellites spaced 4.5 degrees on either side of this position, with a third Telesat Canadian-licensed slot at 72.5° W.L. The exact same interference concerns therefore arise, and should have caused EchoStar to withdraw this third tweener application. In the absence of a voluntary withdrawal, the Commission should take the appropriate action and deny the application.

Further, elsewhere in its Opposition to the Spectrum Five tweener application, EchoStar states:

"There is also a serious question as to whether Spectrum Five has complied with the informational and technical requirements of the Commission's Rules. In finding Spectrum Five's predecessor Petition defective, the International Bureau concluded that it had not provided all of the information required under the Rules, such as a 'sufficient technical showing that the proposed systems could operate satisfactorily if all assignments in the Broadcasting-Satellite Service ('BSS') and feeder link Plans were implemented,' in accordance with Section 25.114(d)(13)(i). See Letter from Fern J. Jarmulnek to Todd M. Stansbury, DA 05-354, File No. SAT-LOI-20041228-00228 (Feb. 17, 2005) ('Dismissal Letter'). While Spectrum Five appears to have provide [sic] a partial interference

⁴ EchoStar, *Opposition to Petition for Declaratory Ruling*, File Nos. SAT-LOI-20050312-00062 and SAT-LOI-20050312-00063, May 16, 2005.

⁵ Ibid, footnote 5.

analysis in its refiled Petition, it clearly does not demonstrate that the proposed operation of its tweener satellites could operate satisfactorily if all U.S. assignments in the BSS and feeder link plans were implemented. For example, Spectrum Five identifies numerous test points that substantially exceed the threshold change in overall equivalent protection margin (0.25 dB) that triggers the agreement seeking process under the ITU's rules. ... It simply is insufficient to assert, based upon these preliminary results, that coordination will be 'readily achievable.' ... Indeed, for some of the same reasons expressed in the Dismissal Letter, i.e., the failure to provide technical analyses demonstrating that the system's impact [on] other frequency assignments in the Region 2 Plan and any proposed modifications to the Region 2 Plan that have been received by the ITU/BR is negligible,' [sic] the Bureau should once again dismiss the Petition as defective and unacceptable for filing."⁶

EchoStar's own tweener satellite application for the 86.5° W.L. position is open to the exact same criticisms, including glossing over the significance of the OEPM triggers caused by its proposed system and the failure to demonstrate that the proposed system's impact on all other frequency assignments in the BSS Region 2 Plan is negligible, particularly in regard to Canada's Plan entries at 91°, 82° and 72.5° W.L. Following EchoStar's logic, its 86.5° W.L. tweener application should similarly be dismissed as defective and unacceptable for filing.

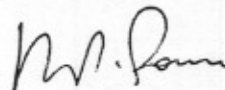
EchoStar's apparent suggestion that its Application need no longer be considered on its own, but could instead be folded into a broader rulemaking addressing on "tweener satellite issues", should also be denied or dismissed. There is now ample evidence on the record demonstrating that the Application is defective and should be denied outright. Indeed, EchoStar's own actions (e.g., withdrawal of its tweener applications at 96.5° and 123.5° W.L.) and arguments in other proceedings (e.g., opposition to the Spectrum Five tweener application at 114.5° W.L.) fully support the view that operation of an EchoStar tweener DBS satellite at the 86.5° W.L. position would be seriously disruptive to Telesat's existing DBS satellite operations and their future development, and should therefore be denied.

⁶ Ibid, footnote 1.

For all of the above reasons, Telesat urges the Commission to deny the EchoStar Application for use of the 86.5° W.L. position.

Respectfully submitted,

Telesat Canada

A handwritten signature in black ink, appearing to read 'R. Power', is written over the printed name.

Robert Power
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June 13, 2005

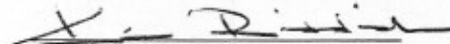
CERTIFICATE OF SERVICE

I, Kim Riddick, do hereby certify that a copy of the foregoing **Reply of Telesat Canada** was served by first-class mail, postage prepaid on this 13th day of June 2005 to the following:

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