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

AUG 25 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
DIRECTV Enterprises, LLC) SAT-LOA-20030611-00115
)
For Authority to Launch and Operate)
DIRECTV 7S (USABSS-18))

Received

SEP 05 2003

Int'l Bureau

SEP 02 2003

Front Office

To: Satellite Division
~~The Commission~~ Policy Branch
International Bureau

REPLY OF SES AMERICOM, INC.

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys and pursuant to Section 25.154 of the Rules of the Federal Communications Commission (the "Commission"),¹ hereby replies to comments filed by DIRECTV Enterprises, LLC ("DIRECTV").² The DIRECTV comments were in response to comments filed by SES AMERICOM³ on the application of DIRECTV for authority to launch and operate a direct broadcast satellite service ("DBS") satellite referred to as "DIRECTV 7S" at the 119° W.L. orbital location.⁴ As the Commission is aware, SES AMERICOM has filed a

¹ 47 C.F.R. § 25.154.
² Reply Comments of DIRECTV Enterprises, LLC, SAT-LOA-20030611-00115, Aug. 18, 2003 ("DIRECTV Reply Comments").
³ Comments of SES AMERICOM, INC., SAT-LOA-20030611-00115, Aug. 7, 2003 ("SES AMERICOM Comments").
⁴ See DIRECTV Enterprises, LLC, Application for Authority to Launch and Operate DIRECTV 7S (USABSS-18), SAT-LOA-20030611-00115, June 11, 2003 (the "DIRECTV 7S Application"); Public Notice, Report No. SAT-00156 (July 8, 2003).

Petition with the Commission to provide DBS capacity from a Gibraltar-licensed satellite at 105.5° W.L.⁵

I. INTRODUCTION

In its Comments, SES AMERICOM did not oppose the DIRECTV 7S Application, but sought clarification on aspects of DIRECTV's technical showing for the proposed satellite.⁶ SES AMERICOM pointed out that, while the DIRECTV 7S Application stated that analysis with respect to the sharing criteria in Appendices 30 and 30A of the ITU Radio Regulations has been performed,⁷ no details of that analysis were provided. In particular, the Application did not specify which assignments and pending modifications were included in the analysis.⁸

In its Reply Comments, DIRECTV did not provide such clarification. Rather, DIRECTV challenged SES AMERICOM's standing even to make such a request, and also argued that the FCC and ITU rules do not require provision of such information.⁹ The record on the technical and regulatory impact of the proposed

⁵ SES AMERICOM, Inc., Petition for Declaratory Ruling To Serve the U.S. Market Using BSS Spectrum from the 105.5° W.L. Orbital Location, SAT-PDR-20020425-00071, April 25, 2002. This satellite corresponds to United Kingdom ITU filings USAT-S1 and USAT-S1 MOD-A. As noted in the SES AMERICOM Comments, the United Kingdom has more recently made an ITU filing for a DBS satellite at 114.5° W.L. (USAT-S2).

⁶ SES AMERICOM Comments at 2.

⁷ DIRECTV 7S Application at 4.

⁸ SES AMERICOM Comments at 3.

⁹ DIRECTV Reply Comments at 1, 4-5.

DIRECTV 7S satellite therefore remains clouded, raising the concern that the Commission could be led unintentionally to overlook the existence of affected systems.

II. SES AMERICOM HAS STANDING IN THIS PROCEEDING.

DIRECTV challenged SES AMERICOM's standing in this proceeding, arguing that the SES AMERICOM ITU filings have not yet been entered into the BSS Plans, and that SES AMERICOM has not yet been granted authority to serve the United States from a DBS satellite.¹⁰ These circumstances clearly do not affect SES AMERICOM's interest or standing in this proceeding.

Given the backlog at the ITU, most of the U.S. ITU filings have likewise not yet gained entry into the Plans, and this has never been considered reason to ignore the interests or ITU priority of the proponents and operators of those satellites. The SES AMERICOM satellite at 105.5° W.L. is licensed by the Government of Gibraltar; a petition to provide service to the United States from this satellite is pending at the

¹⁰ DIRECTV Reply Comments at 4-5. DIRECTV also argued that SES AMERICOM's proposed Plan modifications "deviate radically from the nine degree spacing that has historically characterized the Region 2 BSS Plan and its implementation in the United States." DIRECTV Reply Comments at 5. However, as SES AMERICOM has explained in detail on previous occasions: (1) there is no Commission rule concerning nine-degree separation; (2) the Commission's rules defer to the ITU process for introducing new assignments, and this process clearly permits closer spacing; (3) the Commission has explicitly acknowledged this fact in DBS rulemaking proceedings; and (4) other Administrations and an organization have filed proposed modifications to the BSS Plan to serve the United States with satellite spacing smaller than nine degrees. See, e.g. Consolidated Reply of SES AMERICOM, SAT-PDR-20020425-00071, July 3, 2002, at 43. More recently, another U.S. DBS provider has proposed operations at less than nine-degree spacing. See, e.g., Application for Authority to Construct, Launch, and Operate a Direct Broadcast Satellite in the 12.2-12.7 GHz and 17.3-17.8 GHz Frequency Bands at the 114.5° W.L. Orbital Location, SAT-LOA-20030604-00108, May 30, 2003 (and similar applications filed by EchoStar for 96.5° W.L. (June 5, 2003), 123.5° W.L. (June 6, 2003), and 86.5° W.L. (June 9, 2003)).

Commission; and, as DIRECTV itself acknowledged, SES AMERICOM may have an interest in the 114.5° W.L. orbital location.¹¹ SES AMERICOM would be adversely affected if the FCC and ITU rules were not fully respected in the vicinity of these orbital locations, and therefore is a “party in interest” in this proceeding.¹²

Even if this were not the case, however, the considerations raised in SES AMERICOM’s comments must be considered by the Commission. SES AMERICOM has not raised any issue of policy, but rather is seeking only to ensure that Commission rules are acknowledged and followed. As discussed below, the DIRECTV 7S Application does not contain certain information required by Commission rules, and should not be granted until the record is complete.

III. THE CLARIFICATION REQUESTED BY SES AMERICOM IS REQUIRED BY FCC AND ITU RULES.

DIRECTV argued that it is not required to take into account in its analysis proposed modifications that have not yet been entered into the BSS Plans.¹³ This argument is inconsistent with both FCC and ITU rules.

The Commission’s technical rules and procedures for DBS systems essentially incorporate ITU procedures, contained in Appendices 30 and 30A of the ITU Radio Regulations, for modifying the Region 2 BSS Plan to accommodate systems whose technical parameters differ from the Plan assignments. These procedures prescribe coordination in the case of proposed modifications that “affect” assignments *or proposed*

¹¹ DIRECTV Reply Comments at 4.

¹² See 47 U.S.C. § 309(d)(1).

¹³ DIRECTV Reply Comments at 4.

modifications having higher priority.¹⁴ The Commission rules include a requirement, contained in Section 25.111(c), that an applicant provide information with respect to the sharing criteria in Annex 1 of Appendices 30 and 30A of the ITU Radio Regulations, if the proposed satellite employs technical characteristics differing from those contained in the BSS Plans.¹⁵ It is not clear from the DIRECTV 7S Application whether all of the necessary analysis, in particular with respect to all higher-priority proposed modifications, has been performed. For example, it is not clear whether the analysis included the proposed modification filed by the United Kingdom for the USAT-S2 satellite at 114.5° W.L.¹⁶

DIRECTV further argues that it makes little sense to take into account proposed modifications that affect U.S. Plan assignments and modifications entered in the Plans, because these networks “will require substantial modifications to their operating characteristics before the United States could ever be in a position to give its agreement to these systems.”¹⁷ However, the fact that system parameters are subject to change does not affect the Appendix 30/30A analysis or procedures. As explained

¹⁴ Specifically, Section 4.2.3 (of Article 4) of Appendix 30 requires that Administrations proposing new systems must coordinate with Administrations whose “. . . c) . . . proposed modifications to the Plan were received previously” and “. . . g) whose services are considered to be affected.” Section 4.2.5 specifies that systems are affected if the criteria in Annex 1 of Appendix 30 are exceeded.

¹⁵ 47 C.F.R. § 25.111(c).

¹⁶ Nor is it clear – given DIRECTV’s position that it need not include at least some modifications not yet entered into the Plan – whether DIRECTV included all the U.S. proposed modifications that have been filed at the ITU but that have not yet been entered into the BSS Plans.

¹⁷ DIRECTV Reply Comments at 5.

above, the ITU rules -- essentially incorporated by the Commission in its rules -- require that analysis be performed with respect to all higher-priority assignments and proposed modifications, whether entered into the Plans or not.¹⁸ Indeed, any other result would leave many existing U.S. systems vulnerable, due to the ITU backlog in the processing of proposed modifications to the BSS Plans. As a result of this backlog, many U.S. systems are not yet entered into the Plans.

Finally, DIRECTV argues that it “is content to let the [Radiocommunication Bureau of the ITU] determine the affected Administrations.”¹⁹ However, this ignores the existence of Section 25.111(c) of the Commission’s rules, which requires the applicant to provide such information as part of its application. Such information is needed for the Commission to assess the technical and regulatory impact of the proposed satellite.

For the above reasons, the Commission should require DIRECTV to provide an Appendix 30/30A analysis that specifies the impact on all assignments and pending modifications having higher priority than DIRECTV 7S (USABSS-18), in accordance with Section 25.111(c) of the Commission’s rules.²⁰ In addition, as it has in

¹⁸ The Commission has acknowledged that Appendices 30 and 30A require Administrations to coordinate with any other Administration having an affected Region 2 Plan assignment or prior-filed Plan modification, in order to gain entry into the Region 2 BSS Plans. See, e.g., EchoStar Satellite Corporation, Order and Authorization, DA 02-1455 (June 20, 2002) (the “EchoStar VIII License”), ¶ 7.


¹⁹ DIRECTV Reply Comments at 6.

²⁰ DIRECTV has urged the Commission not to delay grant of its Application. However, the information required by 47 C.F.R. §25.111(c) should be readily ascertainable by DIRECTV, and its submission need not delay this proceeding.

the past,²¹ the Commission should clarify in any license for DIRECTV 7S that coordination will be required with all Administrations having affected assignments or higher-priority pending modifications. Such action is necessary to ensure that the DIRECTV 7S satellite complies with both ITU and Commission Rules.

Respectfully submitted,

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August 25, 2003

²¹ See, e.g., EchoStar VIII License, ¶ 7.


CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2003, a copy of the foregoing Reply of SES AMERICOM, Inc., was served via first class United States mail, postage prepaid, on the following:

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