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August 8, 2008

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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Emergency Request for Clarification of Conditions on the Operation of the EchoStar 11 DBS Satellite at 110° W.L.**

Dear Ms. Dortch:

Spectrum Five, LLC ("Spectrum Five") hereby requests that the Federal Communications Commission ("FCC" or "Commission") clarify the conditions imposed upon EchoStar Satellite Operating Corporation ("EchoStar") with respect to operation of the broadcast satellite service ("DBS") satellite, EchoStar 11, at 110° W.L.

As detailed below, EchoStar has acknowledged that operation of the recently-launched EchoStar 11 exceeds the limits of Annex 1 to Appendix 30 of the ITU Radio Regulations with respect to Spectrum Five's satellite network and, as a result, it must seek the agreement of the Netherlands as an affected Administration. Yet, EchoStar has neither commenced coordination with Spectrum Five, which has held an authorization from the FCC to provide DBS service in the U.S. since 2006,¹ nor provided the Commission with any information to demonstrate that such coordination is technically feasible. In this unique circumstance, there is a serious risk that EchoStar may soon deliver services to U.S. consumers that may have to be abruptly terminated, which would unnecessarily cause significant consumer confusion and service disruption. Accordingly, by clarification of the conditions imposed on EchoStar in connection with the authorization to construct and operate EchoStar 11, the Commission should not permit EchoStar to exceed the parameters specified in the current U.S. assignment in the Region 2 BSS Plan and associated Feeder Link Plan at 110° W.L. unless and until EchoStar (1) fulfills its obligation to secure the agreement of the Netherlands, or (2) provides explicit technical information to demonstrate that such coordination can be effected. In light of the

¹ See *Spectrum Five LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Spectrum from the 114.5° W.L. Orbital Location, Order and Authorization*, 21 FCC Rcd 14023 (2006).

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IB2007001516

S2738 SAT-LOA-20070622-00085
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ECHOSTAR-11

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launch of EchoStar 11, Spectrum Five requests expedited action on this request in order to preserve the status quo pending resolution of the serious public interest issues raised by EchoStar's proposed service.

According to EchoStar, the EchoStar 11 satellite will replace the EchoStar 8 satellite at 110° W.L. Unlike the satellite it is replacing, EchoStar 11 is designed to operate exclusively in full-CONUS mode in "high power" (using 2 X 150 Watt TWTAs combined for each transponder) and "super high power" (using 3 X 150 TWTAs combined for each transponder). In contrast, EchoStar 8 operates with a combination of spot beams and high-power full-CONUS beams (using 2 X 120 Watt TWTAs combined for each transponder in its CONUS beams). EchoStar acknowledges that EchoStar 11's higher power levels and new coverage patterns deviate from the parameters set forth for U.S. assignments in the Region 2 BSS Plan at 110° W.L., which will necessitate modification of the Plan by the ITU.² EchoStar also acknowledges that the EchoStar 11 satellite will "affect" Spectrum Five's satellite network at 114.5° W.L., which triggers the agreement-seeking process for affected Administrations, in this case, with the Netherlands on behalf of Spectrum Five.

Despite the proposal to substantially increase operating power on the new satellite, EchoStar claims that "even in the worst case," EchoStar 11 "would cause no higher interference into neighboring 'tweener' satellites than would be caused by the currently operational ECHOSTAR-8 and ECHOSTAR-10 satellites."³ Yet, at the same time, EchoStar contradicts itself, boasting that "EchoStar 11 satellite will improve CONUS service at 110° W.L. by allowing higher power operations at the slot than are possible using the CONUS capabilities of the EchoStar 8 satellite..."⁴

² EchoStar Application for Authority to Launch and Operate the New EchoStar 11 DBS Satellite at 110 W.L., File No. SAT-LOA-20070622-00085, Attachment A at 9 (Jun. 22, 2007) ("EchoStar 11 Application") (acknowledging its ITU cost-recovery obligations for the ITU filings associated with its EchoStar 11 application).

³ EchoStar 11 Application, Attachment A at 9.

⁴ *Id.*, at 3.



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EchoStar grossly underestimates the degree to which EchoStar 11 will increase interference to the Spectrum Five network.⁵ Unlike EchoStar 8, which employs combined spot beam/CONUS operations, EchoStar 11 will operate exclusively in full-CONUS mode at much higher power. EchoStar attempts to justify its no-interference claim by stating that the peak EIRP of “the ECHOSTAR-11 downlink EIRP is actually less than the highest downlink EIRP of the currently operational EchoStar satellites at the 110°W orbital location,” including EchoStar 8. But EchoStar’s assessment is misleading. The highest downlink EIRP of EchoStar 8 is produced at the “hottest” point in a spot beam that covers a limited area in the United States (*e.g.*, South Florida), rather than the “cooler” areas of the beams as the power levels roll off. In contrast, EchoStar 11 is full-CONUS only. As a result, the peak EIRP of EchoStar 8’s limited spot beams is of little relevance to determining the potential for EchoStar 11 to interfere with other networks in the vast majority of the country. Based on EchoStar’s statement of the high power levels in the “super high power” mode, it appears that the EchoStar 11 CONUS beams will operate at approximately twice the downlink EIRP of EchoStar 8 over a vast majority of the continental U.S., thereby radically increasing the interference to the Spectrum Five network.

EchoStar’s own MSPACE analysis shows that its EchoStar 11 satellite will “affect” Spectrum Five’s BSS5 satellite, for which EchoStar must seek the agreement of the Netherlands.⁶ That analysis shows a range of equivalent protection margin degradations from a low of 0.256 to a high of 4.016, which is well in excess of the 0.25 coordination trigger in the ITU Radio Regulations. EchoStar vigorously contested the issuance of an authorization to Spectrum Five on the ground that Spectrum Five’s proposed operations would exceed the ITU’s trigger for coordination. To address EchoStar’s objections, the Commission conditioned Spectrum Five’s authorization on not “affecting” any U.S. satellite network with higher ITU date priority, absent a coordination agreement with the affected party. The Commission should hold EchoStar to no lesser standard.

⁵ See “EchoStar 11: Coordination Issues with Spectrum Five’s FS_BSS5 at 114.5° WL, attached.

⁶ EchoStar 11 Application, Appendix 1 at 1.

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EchoStar did not submit any showing to demonstrate that coordination with Spectrum Five would be possible, or identify any methods it could employ to facilitate coordination,⁷ as did Spectrum Five in its request for authority to provide U.S. DBS service. Rather, EchoStar simply asserted that “it is not possible for EchoStar to demonstrate now that the ECHOSTAR-11 satellite is compatible with [the Spectrum Five] tweener satellites.”⁸ But, EchoStar must be very familiar with Spectrum Five’s proposed system. EchoStar provided extensive and detailed commentary on Spectrum Five’s technical proposal in the proceeding in which Spectrum requested and, over EchoStar’s objections, received approval to provide DBS service in the U.S. EchoStar and Spectrum Five even hired the same contractor – Loral – to construct their respective satellites. EchoStar had every opportunity to reach out to Spectrum Five prior to the launch of EchoStar 11, but it chose to remain silent instead.

Unlike the general satellite coordination process “that places some burden on both parties involved to reach a mutually acceptable solution, ... the agreement-seeking process [of modifying the BSS Plan] puts the regulatory burden on the party seeking agreement.”⁹ As a result, the Commission has stressed that “the burden shall be on the applicant to show that the agreement of the affected Administration(s) can be obtained.”¹⁰ An operator may demonstrate this by completing coordination or providing “extensive technical analyses demonstrating that the impact on services of the affected Administration is negligible.”¹¹ The operator bears the risk of

⁷ See 47 C.F.R. § 25.114(d)(13)(i) (“applicants shall provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented”).

⁸ EchoStar 11 Application, Attachment A, at 9. To Spectrum Five’s knowledge, EchoStar has not requested any information from Spectrum Five in connection with the proposed operation of EchoStar 11, nor has EchoStar contacted Spectrum Five to initiate coordination.

⁹ See *Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd 11331, 11381 (2002).

¹⁰ *Id.*

¹¹ *Id.*

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coordination and, absent agreement from the affected Administration, will not receive protection internationally.¹²

The unique facts of this case justify clarification of the conditions imposed in the EchoStar 11 authorization. The record shows that the proposed operation of EchoStar 11 will substantially increase interference to another satellite network *previously authorized by the FCC to provide DBS service in the U.S.*, contrary to claims made in the application. Moreover, since the agreement-seeking process has not even commenced,¹³ the Netherlands has been deprived of any opportunity to safeguard its rights as the proponent of a request with higher ITU date priority to modify the Region 2 BSS Plan. In these circumstances, there is a substantial risk that service from EchoStar 11 to U.S. consumers may have to be terminated.

The Commission has recognized that the public interest is best served by avoiding the consumer confusion and disruption in service that would result from an abrupt termination of DBS service.¹⁴ To avoid such confusion in this case, Spectrum Five urges the Commission to clarify the conditions in EchoStar 11's authorization to prohibit operation of the satellite outside the parameters set forth in the existing U.S. BSS assignment at 110° W.L. until such time as EchoStar can complete coordination or demonstrate that coordination is feasible. This condition is contemplated by EchoStar 11's grant stamp and consistent with Commission precedent. The stamp-grant conditions for EchoStar 11 state that it "may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations."¹⁵ The Commission recently imposed

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¹² 47 C.F.R. § 25.111(b).

¹³ The ITU has not yet published the technical characteristics of the EchoStar 11 satellite for which EchoStar seeks to modify the Region 2 Plan.

¹⁴ *See EchoStar Satellite Corporation*, 18 FCC Rcd 19825, 19828 (IB 2003).

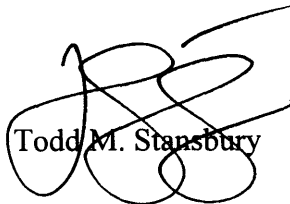
¹⁵ EchoStar Satellite Operating Corporation Application for Authority to Launch and Operate the New EchoStar 11 DBS Satellite at 110 W.L., File No. SAT-LOA-20070622-00085, grant stamp, dated Jan. 11, 2008. *See Policies and Rules for the Direct Broadcast Satellite Service*, 17 FCC Rcd at 11381 ("the FCC

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conditions on the Star One C5 satellite upon a request by the Andean Satellites Association in anticipation of its deployment of a higher priority satellite network at 67° W.L.¹⁶ Such conditions take into account EchoStar's international obligations and ensure that the public is properly safeguarded until the technical issues raised by the proposed operation of EchoStar 11 are adequately resolved.

For the foregoing reasons, the conditions on EchoStar 11 would serve the public interest by preventing harmful interference to Spectrum Five's higher priority BSS5 satellite, preserving the international rights of the Netherlands, and eliminating the risk of significant consumer confusion and harm, all in conformity with Commission precedent and ITU regulations.

Respectfully submitted,



Todd M. Stansbury

cc: Pantelis Michalopoulos, Esq.
Counsel for EchoStar

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may require a licensee to modify its operations in the event that harmful interference is caused to the conforming assignments of another Administration, and we will require the non-conforming DBS licensee to accept interference from the assignments of other Administrations”).

¹⁶ *Star One S.A. Petition for Declaratory Ruling to Add the Star One C5 Satellite at 68° W.L. to the Permitted Space Station List, Order on Reconsideration, DA 08-1645 (July 14, 2008).*