

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Spectrum Five, LLC)
)
Petition for Clarification of Condition)
in EchoStar 11 License)

ORDER

Adopted: August 26, 2008

Released: August 26, 2008

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant a request filed by Spectrum Five, LLC (Spectrum Five) to the extent that we are adding an additional term or condition for the operation of the EchoStar 11 satellite, pursuant to an existing condition of the EchoStar 11 satellite license held by EchoStar Satellite Operating Corporation (EchoStar)¹ As discussed below, we have determined that this new term or condition is necessary in order to effectuate the coordination and/or agreements required by EchoStar's authorization.

II. BACKGROUND

2. Spectrum Five is a Direct Broadcast Satellite (DBS) operator licensed by the Netherlands. On behalf of Spectrum Five, the Netherlands filed documentation for two satellites at the 114.5° W.L. orbit location with the International Telecommunication Union (ITU) on March 29, 2005. In 2006, Spectrum Five was permitted to enter the U.S. market for DBS services using those two satellites at 114.5° W.L., between neighboring DBS satellites at 110° W.L. and 119° W.L.²

3. In January 2008, EchoStar was granted authority to launch and operate EchoStar 11, a DBS satellite at the 110° W.L. orbit location.³ Subsequently, on May 15, 2008, the United States made a filing with the ITU for EchoStar 11 (USABSS-30). Spectrum Five notes, however, that

¹ See Policy Branch Information, *Public Notice*, DA 08-120 (released Jan. 18, 2008).

² Spectrum Five, LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Service (BSS) Spectrum from the 114.5° W.L. Orbital Location, *Order*, 21 FCC Rcd 14023, 14043 (para. 43) (Int'l. Bur., 2006)(*Spectrum Five Order*). One of the satellites at the 110° W.L. location at that time was the EchoStar 8 satellite, which has ITU date priority over the Spectrum Five satellites. Spectrum Five's access to the U.S. market was conditioned on Spectrum Five completing coordination with its neighboring satellite operators.

³ See Policy Branch Information, *Public Notice*, DA 08-120 (released Jan. 18, 2008).

the ITU has not yet published the documentation for the EchoStar 11 satellite.⁴ One of the conditions placed on the EchoStar 11 authorization reads as follows:

EchoStar shall provide the Commission with all information it requires in order to modify the Appendix 30 BSS Plan and associated Appendix 30A feeder-link Plan to incorporate the characteristics of the BSS space station of the EchoStar 11 satellite, USABSS-30, in accordance with the ITU Radio Regulations. EchoStar shall be held responsible for all cost recovery fees associated with these ITU filings. We also note that no protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed, or, with respect to individual administrations, coordination agreements are successfully completed. Any radio station authorization for which coordination has not been completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations.⁵

4. On August 8, 2008, Spectrum Five filed a petition for clarification regarding the conditions in the EchoStar 11 license. Specifically, according to Spectrum Five, under the condition quoted above, "the Commission should not permit EchoStar to exceed the parameters specified in the current U.S. assignment in the Region 2 BSS Plan⁶ 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."⁷

5. Spectrum Five explains that the EchoStar 11 satellite is a replacement for the EchoStar 8 satellite at 110° W.L.⁸ Spectrum Five further notes that the EchoStar 11 satellite is designed to operate at higher power levels than the EchoStar 8 satellite that it is replacing.⁹ Spectrum 5 argues that the EchoStar 11 satellite deviates from the Region 2 BSS Plan, and that "EchoStar grossly underestimates the degree to which EchoStar 11 will increase interference to the Spectrum Five network."¹⁰

⁴ Letter from Todd M. Stansbury, Counsel for Spectrum Five, to Marlene H. Dortch, Secretary, FCC (dated Aug. 21, 2008) (*Spectrum Five Letter*) at 1.

⁵ See EchoStar 11 License, Call Sign S2738.

⁶ The current U.S. assignment in the Region 2 BSS Plan for 110° W.L. is EchoStar 6. However, in an *ex parte* statement filed on August 21, 2008, Spectrum Five states that the EchoStar 11 satellite should not be operated at power levels above those of EchoStar 8, prior to coordination or provision of technical information to demonstrate that such coordination can be effected. *Spectrum Five Letter* at 1-2.

⁷ Spectrum Five Petition at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2-3.

6. Spectrum Five seeks to ensure that its ITU priority rights can be effectively enforced by the Commission notwithstanding the anticipated future service disruptions to EchoStar's subscribers if EchoStar 11 commences service at 110° W.L. prior to completion of coordination with Spectrum Five.¹¹ Spectrum Five further asserts that EchoStar has not attempted to coordinate the EchoStar 11 satellite with Spectrum Five's planned satellite at 114.5° W.L.,¹² even though Spectrum Five has attempted to contact EchoStar to coordinate.¹³ Therefore, 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."¹⁴ Therefore, Spectrum Five maintains that the clarification it seeks would serve the public interest by preventing harmful interference to its higher priority satellites, and by eliminating the risk of significant consumer confusion and harm.¹⁵

7. On August 18, 2008, EchoStar filed an opposition to Spectrum Five's petition, claiming that the petition was not timely filed. EchoStar contends further that it cannot coordinate EchoStar 11 with Spectrum Five's satellites until those satellites are coordinated with EchoStar 8, because that coordination will require Spectrum Five to redesign its satellites. Finally, according to EchoStar, it is unreasonable to require EchoStar 11 to reduce its power before the Spectrum Five satellites are launched.

III. DISCUSSION

8. Pursuant to the EchoStar 11 license condition quoted above, EchoStar "may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations." We find here that an additional term of operation, whereby EchoStar would be required to tailor its EchoStar 11 operations to avoid interference to any operational system that has a higher ITU priority than the priorities obtained by EchoStar, is a necessary part of a successful coordination, given that EchoStar interference with an operational Spectrum 5 network having higher ITU priority would inevitably impair coordination negotiations.¹⁶ To this end, we hereby impose the following requirement on EchoStar's operation of the EchoStar 11 satellite (whose ITU filing is USABSS-30):

If coordination for EchoStar 11 has not been completed and/or necessary agreements under Appendices 30 and 30A have not been obtained with a satellite network having ITU date of receipt priority, and if a satellite network with superior ITU date of receipt priority is brought into use at its assigned location and receives harmful interference, then

¹¹ *Spectrum Five Letter* at 1.

¹² *Spectrum Five Petition* at 4-5.

¹³ *Spectrum Five Letter*, Attachment.

¹⁴ *Spectrum Five Petition* at 5.

¹⁵ *Spectrum Five Petition* at 5.

¹⁶ Spectrum Five styles its request as an "Emergency Request for Clarification of Conditions on the Operation of the EchoStar 11 DBS satellite at 110° W.L." Petitions for clarification are governed by Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2. Section 1.2 does not include any provisions regarding deadlines for filing a petition for clarification. For this reason, we do not agree with EchoStar that we should reject Spectrum Five's request as being untimely filed.

EchoStar 11 must modify its operations to not exceed the technical specifications of the nominal 110° W.L. location in the Region 2 BSS plan, as such specifications would be modified by the pending EchoStar 8 plan modification proposal (to the extent the EchoStar 8 proposal has ITU date of receipt priority with respect to the satellite network brought into use).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that the request of Spectrum Five, LLC, IS GRANTED to the extent indicated above and otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Helen Domenici
Chief, International Bureau