

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Pantelis Michalopoulos
202.429.6494
pmichalo@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

FILED/ACCEPTED

JUN 30 2009

Federal Communications Commission
Office of the Secretary

June 30, 2009

Via HAND DELIVERY

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

Re: **EchoStar Satellite Operating L.L.C.'s Application for Minor Modification of DBS Authorization and Authority to Launch the EchoStar 14 Satellite and to Operate it at 118.9° W.L., FCC File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064 (Call Sign S2790)**

Dear Ms. Dortch:

On May 18, 2009, EchoStar Satellite Operating L.L.C. (“DISH”) submitted the above referenced application requesting authority to launch the technologically advanced EchoStar 14 satellite to the nominal 119° W.L. orbital location where it will replace the EchoStar 7 satellite and operate over the 21 Direct Broadcast Satellite (“DBS”) channels licensed to DISH at that orbital location.¹ On June 17, 2009, Spectrum Five LLC (“Spectrum Five”) submitted a letter requesting that the application be dismissed as defective.² There is no basis for denial because DISH submitted all technical showings

¹ File No. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064 (“Application”).

² See Letter to Marlene H. Dortch, Secretary, FCC, from Howard W. Waltzman, Counsel to Spectrum Five LLC, dated June 17, 2009 (“Spectrum Five Letter”).

Marlene H. Dortch
June 30, 2009
Page 2

required by Section 25.114 of the Commission's rules with the original application and the subsequent revised Schedule S. 47 C.F.R. § 25.114.

It should be highlighted that the existence of any dispute is of Spectrum Five's own making. Spectrum Five has not begun an effort to satisfy the condition placed on its authorization for the 114.5° W.L. slot by the Commission in November 2006 – the obligation to coordinate with DISH's prior satellites at 110° W.L. and 119° W.L. Yet Spectrum Five now invokes its uncoordinated system to fault DISH for not coordinating. Spectrum Five's apparent unwillingness to coordinate its own satellites should not now serve as a regulatory advantage. That said, DISH will not object to the imposition on EchoStar 14 operations of a condition identical to that imposed on EchoStar 11, which addressed Spectrum Five's analogous concerns for that satellite. The Commission should, therefore, reject Spectrum Five's self-serving request for dismissal and remind Spectrum Five of its preexisting coordination obligation.

I. ITU Coordination

Spectrum Five's primary argument for dismissal is its allegation that the Application fails to comply with Sections 25.114(b) and (d)(13)(i) of the Commission's rules,³ which requires applicants to "... provide sufficient technical showing that the proposed system could operate satisfactorily if all assignments in the BSS and feeder link Plans were implemented." 47 C.F.R. §25.114(d)(13)(i). Spectrum Five's stated ground for concern in this regard is the Netherlands' ITU filing at the 114.5° W.L. orbital position that Spectrum Five hopes to utilize. As Spectrum Five and the Commission are well aware, the so-called "tweener" filings of Spectrum Five at the 114.5° W.L. orbital position are required, under ITU procedures as well as the conditions on Spectrum Five's license to operate at 114.5° W.L., to reach successful coordination with prior-filed assignments in the ITU BSS Plan or operate at significantly reduced power levels such that they no longer affect other U.S.-filed BSS networks.⁴ The prior-filed assignments with which Spectrum Five needs to coordinate include numerous DISH networks at the 110° W.L. and 119° W.L. orbital clusters. Spectrum Five has not approached DISH to initiate this coordination, let alone completed it.⁵ In this situation, bearing in mind the limited regulatory lifetime remaining for the Netherlands' Part A ITU filings at the 114.5° W.L. orbital position, it is reasonable to assume that the Spectrum Five BSS networks, as described in the Netherlands' Part A ITU filings, will not be implemented. This was the basis of the comment included in the Application that coordination of

³ *Id.* at 2-3.

⁴ *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 and Authorization, 21 FCC Rcd 14023, ¶ 30 (Int'l Bur. 2006) ("Spectrum Five Order").

⁵ DISH does not have any information with respect to coordination discussions Spectrum Five may have held with DIRECTV, which is authorized to operate on 11 DBS channels at 119° W.L.

Marlene H. Dortch
June 30, 2009
Page 3

the EchoStar 14 satellite with the Netherlands' BSS networks at 114.5° W.L. will likely not be required.⁶

It should be noted that the Netherlands' ITU filings at the 114.5° W.L. orbital position are only at the Part A stage because they have not been successfully coordinated with all affected networks (including those of DISH). Such Part A filings do not therefore have the full interference protection rights of assignments that are considered to be in the ITU BSS Plan (similar to being Notified in the ITU's Master International Frequency Register in the Fixed-Satellite Service). Until such time as these Netherlands' ITU filings reach the Part B stage they cannot be considered as assignments requiring long-term interference protection under Section 25.114(d)(13)(i) of the Commission's rules. 47 C.F.R. § 25.114(d)(13)(i).

Furthermore, a DBS applicant is not required to coordinate with potentially affected operators prior to receiving authorization, let alone filing an application. The Bureau has previously stated "[c]oordination with other administrations is not a prerequisite to grant of U.S. DBS space station licenses to U.S. operators," but rather an operator may not exceed the ITU trigger for coordination until agreement with prior-filed networks is reached.⁷ Therefore, the Bureau should not dismiss DISH's application because DISH has not explained how it would coordinate with Spectrum Five, rather DISH should be allowed to operate EchoStar 14 as described in the Application subject to all applicable ITU procedures.

The requested explanation of how DISH proposes to coordinate with a satellite that has itself not been coordinated is, moreover, an impossibility. DISH would be coordinating with a phantom network. The technical information Spectrum Five has provided for its proposed BSS network at 114.5° W.L. (through the Netherlands Administration) does not reflect the actual operating parameters that the Spectrum Five satellite will need to employ in order to meet the ITU coordination requirements and the conditions of its license. Spectrum Five will need to alter these parameters significantly to avoid interference into DISH's networks with date priority. Until then, DISH cannot be required to limit EchoStar 14's operations, to the detriment of 13 million consumers, in order to accommodate satellite operations that cannot exist as proposed.

Once Spectrum Five's network is fully coordinated as required under the ITU Radio Regulations and the condition imposed on Spectrum Five's authorization, DISH is prepared to coordinate the EchoStar 14 operations or operate it within the ITU BSS Plan technical specifications. Thus, DISH does

⁶ See Application, Technical Annex at 7, A1-2.

⁷ *EchoStar Satellite Operating Corporation; Application to Construct, Launch, and Operate a Direct Broadcast Satellite at the 86.5° W.L. Orbital Location*, Memorandum Opinion and Order, 23 FCC Red 3252, ¶ 21 (2008). The Bureau similarly stated that coordination is not a prerequisite to granting a foreign entity access to the U.S. market in its order authorizing Spectrum Five to operate at 114.5° W.L. Spectrum Five Order at ¶ 31.

Marlene H. Dortch
June 30, 2009
Page 4

not object to imposition here of the same condition the Bureau has imposed in comparable circumstances on EchoStar 11 operations:

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 EchoStar 11 must modify its operations to not exceed the technical specifications of the nominal 110° W.L. location in the Region 2 BSS plan⁸

Moreover, DISH, as it has in the past, will follow all applicable ITU procedures with respect to the operation of the EchoStar 14 satellite, including all necessary coordination with all prior-filed networks.⁹

II. EIRP Levels

According to Spectrum Five, DISH “ignores the fact that the EIRP levels produced by the existing operational DISH satellite at the 119° W.L. orbital location result from spot beams with limited coverage areas, whereas Echostar-14 would generate comparable EIRP values in ‘all-CONUS’ mode.”¹⁰ Not so. DISH merely provides the comparison to which Spectrum Five refers to demonstrate that EchoStar 14 will not increase the interference environment at the nominal 119° W.L. orbital location. DISH, however, specifically identified the peak EIRP level of the EchoStar 14 CONUS+ operations as

⁸ Spectrum Five LLC, Petition for Clarification of Condition in EchoStar 11 License, *Order*, 23 FCC Rcd 12786, ¶ 8 (Int’l Bur. 2008).

⁹ Spectrum Five’s comparison of DISH’s alleged deficiencies to its own application dismissal in February 2005 is inapposite, and actually highlights the fact that DISH provided all of the information required under Section 25.114. Spectrum Five Letter, nts. 1, 17 (citing Letter from Fern J. Jarmulnek, Deputy Chief, Satellite Division of the FCC, to Todd M. Stansbury, Counsel for Spectrum Five LLC, 20 FCC Rcd 3451, File No. SAT-LOI-20041228-00228, dated Feb. 17, 2005 (“Spectrum Five Dismissal Letter”). In its letter dismissing Spectrum Five’s application, the Bureau noted that Spectrum Five failed to provide any technical showing under Section 25.114(d)(13), deferring the submission of such information to a future filing. Spectrum Five Dismissal Letter at 2. DISH, on the other hand, demonstrated that EchoStar 14 will not interfere with the networks that have a fully Notified (*i.e.*, Part B) frequency assignment under the ITU Region 2 BSS Plan, and confirmed that coordination with the Canadian Administration responsible for the ITU assignment at 129° W.L. will be straightforward because the ten degrees of orbital separation between the two proposed networks and the low Overall Equivalent Protection Margin exceedance ensure minimal interference into the Canadian network. Application, Technical Annex at A1-1. Therefore, unlike Spectrum Five’s dismissed application, DISH provided the information required under Section 25.114(d)(13).

¹⁰ Spectrum Five Letter at 3.

Marlene H. Dortch
June 30, 2009
Page 5

“approximately 59 dBW per channel when downlinking into the CONUS+ beam” when operating all 32 channels simultaneously and approximately 61 dBW when 21 channels are operated with three phase-combined Travelling Wave Tube Amplifiers (“TWTAs”) per channel.¹¹ While there may be some fluctuations of this EIRP across the continental United States, the peak EIRP at any one location will not exceed 61 dBW. Armed with this knowledge, an operator can determine whether its operations in a particular swath of the United States may be affected by the EchoStar 14 operations and raise its concerns to the Commission under Section 25.154. 47 C.F.R. §25.154. It should be noted further that the original ITU Region 2 BSS Plan assignments for the U.S., which consisted of large area coverage beams with half-CONUS coverage, had peak EIRP levels in excess of 62.6 dBW.¹² This further reinforces the fact that the EchoStar 14 CONUS+ coverage beam will not increase the interference environment at the 119° W.L. orbital position relative to existing Plan assignments.

III. Spot Beam Operations and Link Margins

Spectrum Five’s final arguments that DISH did not describe the operations of the spot beam modes and did not provide link margins for the spot beam modes of operation in its Schedule S is similarly misplaced.¹³ Section 25.114(d)(4) requires applicants to provide a “description of the transmission characteristics and performance objectives for each type of proposed service, details of the link noise budget, . . . modulation parameters, and overall link performance analysis . . .” 47 C.F.R. 25.114(d)(4). In the technical annex attached to DISH’s Application, DISH described the types of services to be provided and the transmission characteristics, and provided representative link budgets to demonstrate the overall link performance analysis.¹⁴ These link budgets encompass all modulation schemes and coding rates and therefore thoroughly describe the way the EchoStar 14 satellite can operate and the resulting link margins that will exist. They also demonstrate well the wide ranging ability of DISH to control the service quality delivered to customers by adjusting these parameters. DISH also described in the Application each transponder’s operations, including the 132 transponders capable of providing spot beam coverage, in its Schedule S.¹⁵ This information meets all of the requirements of Section 25.114(d)(4). While DISH did not provide individual link budgets for each of the 51 spot beams, it did so to avoid inundating the Bureau with excessive and redundant information. This presentation is consistent with past practice, previously accepted by the Bureau. In the cases where the downlink EIRP levels towards a particular geographic location to be served differs between the

¹¹ Application, Technical Annex at 1, 7.

¹² ITU Radio Regulations, Appendix 30, Article 10.

¹³ Spectrum Five Letter at 4.

¹⁴ Application, Technical Annex at 7.

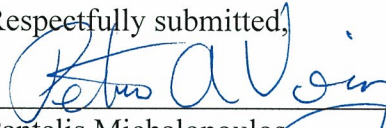
¹⁵ See EchoStar Satellite Operating L.L.C., File No. SAT-AMD-20090604-00064, Schedule S (filed June 4, 2009) (amending the Application to provide a revised Schedule S).

Marlene H. Dortch
June 30, 2009
Page 6

CONUS+ beam and a particular spot beam, DISH will select a suitable combination of modulation scheme, coding rate and receive antenna diameter to ensure that viable links are provided to DISH's customers. All the relevant data for this determination is provided in the link budgets included with the EchoStar 14 Application.

As demonstrated in DISH's Application and amplified above, the Application contains all of the information required under the Commission's rules and should promptly be placed on public notice.

Respectfully submitted,



Pantelis Michalopoulos

Petra A. Vorwig

Counsel for EchoStar Satellite Operating L.L.C.

CERTIFICATE OF SERVICE

I, Petra A. Vorwig, hereby certify that, on this 30th day of June 2009, a copy of the foregoing was sent by first-class U.S. mail, postage prepaid, to the following:

Howard W. Waltzman
1909 K Street, N.W.
Washington, D.C. 20006-1101



Petra A. Vorwig