

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

In the Matter of:

DISH OPERATING L.L.C.

Application for Minor Modification of DBS
Authorization and Authority to Launch the
EchoStar 14 Satellite and to Operate it at
118.9° W.L.

)
)
)
) File No. SAT-LOA-20090518-00053
) File No. SAT-AMD-20090604-00064
) Call Sign S2790
)
)
)

OPPOSITION TO PETITION FOR IMPOSITION OF CONDITIONS

DISH Operating L.L.C. filed the above referenced application requesting authority to launch and operate a Direct Broadcast Satellite (“DBS”) service satellite, EchoStar 14, at 118.9° W.L.¹ Spectrum Five LLC (“Spectrum Five”) subsequently filed a petition requesting that the Bureau restrict EchoStar 14’s operations to the parameters of the analog ITU Region 2 BSS plan in order to avoid interference with Spectrum Five’s uncoordinated, non-operational satellites.²

This is an unprecedented and anti-consumer request, and should be rejected. DISH Network should not be forced to alter its operations when Spectrum Five has not taken concrete steps to bring its satellite into use. In fact, the Commission’s past approach in similar

¹ File No. SAT-LOA-20090518-00053 (filed May 18, 2009), amended by File No. SAT-AMD-20090604-00064 (filed June 4, 2009) (“EchoStar 14 Application”). On August 11, 2009, EchoStar Satellite Operating L.L.C. changed its name to DISH Operating L.L.C. *See* Letter from Pantelis Michalopoulos, Counsel for DISH Operating L.L.C., to Marlene H. Dortch, Secretary, FCC (Sept. 9, 2009).

² Spectrum Five LLC, Petition of Spectrum Five LLC for Imposition of Conditions, File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064 (filed Oct. 5, 2009) (“Spectrum Five Petition”).

circumstances has served the public interest well, balancing the benefit of providing U.S. consumers new satellite services with the need to protect potential future satellite operations and operators. Spectrum Five has offered no legal or policy basis to alter the Commission's practice in this case. Thus, consistent with Commission precedent, DISH is prepared to submit to the same additional coordination requirement imposed on its EchoStar 11 satellite (and similarly situated BSS satellites) requiring DISH to coordinate with higher-priority networks once they are brought into use.

I. ECHOSTAR 14 SHOULD BE SUBJECTED TO THE SAME CONDITION IMPOSED ON ECHOSTAR 11

Despite Spectrum Five's attempts to argue otherwise, the Bureau has already developed a means of protecting unbuilt satellites with ITU priority by requiring lower-priority operators to coordinate with higher-priority networks when they are brought into use.³ This policy, contrary to what Spectrum Five is requesting, allows licensees to operate at power levels in excess of existing Region 2 BSS plan parameters until a higher-priority network becomes operational, at which point the U.S. licensee is required to coordinate its operations or operate within the ITU Region 2 BSS plan parameters.

³ Spectrum Five claims that DISH has not yet submitted the required modification information to the ITU, Spectrum Five Petition at 3; however, the ITU's SNL database lists the USABSS-31 filing as having been received on August 25, 2009. *See* International Telecommunication Union, <http://www.itu.int/ITU-R/space/snl/query/SNLsectC5output.asp> (last visited Oct. 15, 2009). Furthermore, while Article 4.2.6 of Appendix 30 of the ITU Radio Regulations indicates that modification information should be submitted "preferably not later than two years before the date on which the assignment is to be brought into use," there is no specific requirement that it be submitted at least two years in advance. ITU Radio Regulations, Appendix 30, Art. 4.2.6. Whether or not an operator complies with the two-year recommendation also does not affect either the ITU plan modification procedure or the rights of any parties.

This reasonable approach was applied to DISH's EchoStar 11 and 8 satellites and DIRECTV's DIRECTV 7S satellite. Specifically, in the order granting DISH authority to launch and operate the EchoStar 11 satellite at 110° W.L., the Bureau conditioned the grant as follows:

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 plan⁴

Similarly, in its order authorizing DISH's predecessor to operate EchoStar 8 at 110° W.L., the Bureau imposed the following condition:

until the International Telecommunications Union (ITU) Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar VIII and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current U.S. assignment to the Region 2 BSS Plan at 110° W.L. to other BSS or feeder link assignments or other services or satellite systems *operating* in accordance with the ITU Radio Regulations⁵

Spectrum Five cites to the EchoStar 8 and DIRECTV 7S orders to support its argument that lower priority networks should be limited to the parameters of the ITU Region 2 BSS plan.⁶ Yet

⁴ *Spectrum Five LLC, Petition for Clarification of Condition in EchoStar 11 License*, Order, 23 FCC Rcd. 12786, 12787-88 ¶ 8 (2008) ("EchoStar 11 Order"). While Spectrum Five claims that this condition was limited in scope due to its own failure to raise concerns until after EchoStar 11 was launched, *see* Spectrum Five Petition at n. 32, the Bureau's order does not indicate that the condition was unique in this regard. Rather, the Bureau recognized that the additional condition was a necessary part of "successful coordination, given that EchoStar interference with an operational Spectrum 5 network having a higher ITU priority would inevitably impair coordination negotiations." EchoStar 11 Order, 23 FCC Rcd. at 12787 ¶ 8.

⁵ *EchoStar Satellite Corporation, Application for Minor Modification of Direct Broadcast Satellite Authorization, Launch and Operating Authority for EchoStar VIII*, Order and Authorization, 17 FCC Rcd. 11326, 11330 ¶ 12 (2002) (emphasis added). A nearly identical condition was imposed on DIRECTV's operations of its DIRECTV 7S satellite in 2004. *See DIRECTV Enterprises, LLC, Application for Authority to Launch and Operate DIRECTV 7S (USABSS-18)*, Order and Authorization, 19 FCC Rcd. 7754, 7761-62 ¶ 28 (2004).

⁶ Spectrum Five Petition at 13.

the actual language of those conditions supports DISH's position: the Bureau has maintained a policy of restricting operations only after a higher-priority network comes into operation.

This policy makes good sense as it enables services, such as those that will be provided from EchoStar 14, to be delivered to U.S. consumers more quickly, without causing any actual interference with any higher priority satellites entitled to protection. Applying a condition similar to that imposed on EchoStar 11 to EchoStar 14 is appropriate because it allows DISH, who has diligently pursued the construction and launch of technologically advanced satellites to provide increased and improved service to consumers, to take advantage of their satellites' full potential, while at the same time protecting prior filed networks once they become operational.

Such a condition is particularly appropriate in Spectrum Five's case because it has yet to coordinate its satellites with prior filed networks operated by DISH and DIRECTV. By applying the condition imposed on EchoStar 11, the Bureau will ease and rationalize the coordination process by ensuring that Spectrum Five's satellite design reflects this necessary coordination before DISH is required, in its turn, to coordinate EchoStar 14. Further, in this manner, EchoStar 14's operations will not have to be unduly restricted prior to Spectrum Five meeting its own coordination obligations. Specifically, in its grant of authority to Spectrum Five, the International Bureau ruled that Spectrum Five will have to "conduct coordination negotiations with the affected DBS operators [DISH and DIRECTV] at the 110° W.L. and 119° W.L. orbital locations. . . ."⁷

The Bureau noted that Spectrum Five would need to redesign its network as a result of those negotiations to avoid interference into the existing higher-priority operational networks of

⁷ *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, 14033 ¶ 18 (2006).

DISH and DIRECTV. Spectrum Five, however, has not yet initiated coordination talks with DISH.⁸ Similarly, Spectrum Five has not approached DISH with any suggestion that it has completed a satellite redesign to avoid the need to coordinate. Rather, on December 2, 2008, Spectrum Five submitted updated antenna beam information relating to design changes made “to facilitate coordination.”⁹ This filing did not state that the changes made coordination unnecessary or were made as a result of successful or even on-going coordination efforts. Spectrum Five’s system remains a moving target that will surely be superseded by additional redesigns resulting from coordination.

Furthermore, neither DISH nor the United States has an obligation to reach a coordination agreement with networks that propose to modify the ITU’s Region 2 plan, but have not been successfully coordinated and reached agreement with established plan networks. As noted in the EchoStar 14 Application, if “tweener” filings, such as Spectrum Five’s, cannot be coordinated, then they will expire before DISH’s deadline for filing Part B of its ITU filing for EchoStar 14.¹⁰ By no stretch does this amount to an assertion, as Spectrum Five claims, “that DISH has no intention to coordinate with Spectrum Five (or the Netherlands). . . .”¹¹ This

⁸ DISH is not aware of whether Spectrum Five has initiated coordination discussions with DIRECTV; however, it notes that in a letter to the Bureau submitted on February 6, 2009, DIRECTV indicated that Spectrum Five had not yet contacted it to begin coordination discussions. *See* Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, at 2 (Feb. 6, 2009).

⁹ Letter from Todd Stansbury, Counsel for Spectrum Five LLC, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOI-20050312-00062, SAT-LOI-20050312-00063 (Dec. 2, 2008).

¹⁰ *See* EchoStar 14 Application, Technical Annex at 7 A1-2.

¹¹ Spectrum Five Petition at 10.

mischaracterizes DISH's application and position.¹² DISH has every intention to coordinate EchoStar 14's operations with all networks, once they have been successfully coordinated in appropriate sequence.

Faced with an unknown and ill-defined Spectrum Five operation, DISH cannot, however, be required to limit EchoStar 14's operations, to the detriment of its 13 million customers. Upon the successful coordination of a reconfigured Spectrum Five network with the DISH and DIRECTV ITU satellite filings that have priority over Spectrum Five, DISH is ready and willing to conduct coordination negotiations with Spectrum Five with respect to the EchoStar 14 satellite as required by the ITU rules and pursuant to a license condition similar to that imposed on EchoStar 11.

II. ECHOSTAR 14'S OPERATIONS CAN BE COORDINATED

As detailed in the EchoStar 14 application's technical annex, and as described in response to Spectrum Five's request to dismiss DISH's application,¹³ EchoStar 14 will not substantially increase the amount of interference from 119° W.L. compared to the current operation of EchoStar 7, and therefore can be coordinated with a reconfigured Spectrum Five satellite.¹⁴ Spectrum Five's attempt to demonstrate the differences between each satellite's EIRP at specific geographic locations does not change the fact that the worst case EIRP level for EchoStar 14's

¹² EchoStar 14 Application, Technical Annex at A1-2.

¹³ *See id.*, Technical Annex; *see also* Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Operating L.L.C., to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064 (June 30, 2009) ("Response to Request to Dismiss").

¹⁴ Spectrum Five tries to create the impression that the need to modify the ITU Region 2 BSS plan to accommodate EchoStar 14 is a significant and unusual event; however, DISH notes that every U.S. DBS satellite to date has required modification to the ITU Region 2 plan in this way.

CONUS-plus beam is 60.7 dBW when operating three phase-combined Traveling Wave Tube Amplifiers (“TWTA”s) per channel.¹⁵ EchoStar 7 produces a maximum EIRP level of 58.9 dBW when operating all of its channels in the CONUS beam.¹⁶ More importantly, EchoStar 14 is operationally flexible, and can be configured to produce a maximum EIRP level of 59 dBW when operating its CONUS-plus beam over two phase-combined TWTAs per channel.¹⁷ Therefore, once Spectrum Five’s satellites are fully coordinated with DISH and DIRECTV’s prior filed networks, DISH will be able to configure EchoStar 14’s operations so as to meet any coordinated requirements. Spectrum Five’s reliance on linear percentages when comparing EIRP levels between EchoStar 7 and EchoStar 14 is meaningless and misleading: interference assessment during coordination is performed in the logarithmic domain (*i.e.*, in dBs).

Spectrum Five also claims that EchoStar 14 “deviates significantly from the Region 2 BSS Plan.”¹⁸ As DISH has already pointed out, however, the original ITU Region 2 BSS Plan assignments for the U.S., which consisted of large area coverage beams with half-CONUS coverage, already had peak EIRP levels in excess of 62.6 dBW.¹⁹ EchoStar 14 thus will not greatly increase the amount of interference currently produced at the 119° W.L. orbital location.

¹⁵ EchoStar 14 Application, Technical Annex at 1-2.

¹⁶ *See* ITU publication for USABSS-14 in ITU IFIC 2521, AP30-30A/E/301 (June 15, 2004). The cited EIRP level is derived from the beam peak gain and power per carrier for the CONUS beam emission.

¹⁷ EchoStar 14 Application, Technical Annex at 1.

¹⁸ Spectrum Five Petition at 5.

¹⁹ ITU Radio Regulations, Appendix 30, Art. 10. *See also* Response to Request to Dismiss at 5.

III. CONCLUSION

For the foregoing reasons, DISH requests that the Bureau reject Spectrum Five's request to limit EchoStar 14 to operating within the ITU Region BSS plan parameters until it coordinates with Spectrum Five's uncoordinated, non-operational satellites. Rather, DISH agrees to submit to the condition imposed on its EchoStar 11 authorization to coordinate with any higher-priority network once it is brought into use.

Respectfully submitted,

/s/

Linda Kinney
Vice President, Law and Regulation
Brad Gillen
Director and Senior Counsel
DISH Operating L.L.C.
1233 20th Street, N.W.
Suite 302
Washington, DC 20036-2396
(202) 293-0981

Pantelis Michalopoulos
Petra A. Vorwig
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000
Counsel for DISH Operating L.L.C.

October 15, 2009

Certificate of Service

I hereby certify that, on this 15th day of October 2009, I caused to be hand-delivered a copy of the foregoing upon the following:

David Wilson
President
Spectrum Five LLC
1776 K Street, N.W., Suite 200
Washington, D.C. 20006

Howard W. Waltzman
Adam C. Sloane
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006

/s/ Petra A. Vorwig
Petra A. Vorwig