

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
DIRECTV Enterprises, LLC)	
)	
Application for Authority to Launch)	
and Operate DIRECTV RB-2A, a)	File No. SAT-LOA-20090807-00085
a Satellite in the 17/24 GHz Broadcasting)	
Satellite Service at 103° W.L.)	Call Sign S2796
_____)	

**PETITION OF SPECTRUM FIVE LLC TO CONDITION ANY APPROVAL OF
DIRECTV'S APPLICATION ON
SPECTRUM FIVE'S RELATED PENDING PETITION FOR RECONSIDERATION**

Pursuant to Section 25.154 of the Commission's rules (47 C.F.R. § 25.154), Spectrum Five LLC ("Spectrum Five") hereby petitions the International Bureau ("Bureau") to condition any approval of the application filed by DIRECTV Enterprises, LLC ("DIRECTV") for authority to launch and operate DIRECTV RB-2A, a satellite in the 17/24 GHz Broadcasting-Satellite Service ("BSS") at the nominal 103° W.L. orbital location (hereinafter, "RB-2A Application"), on the resolution of Spectrum Five's petition for reconsideration of the Bureau's Order and Authorization of July 28, 2009 (hereinafter, "July 28 Order"), which granted DIRECTV authority to construct, launch, and operate an offset BSS space station at the 102.825° W.L. orbital location.¹ As DIRECTV itself has acknowledged, its RB-2A Application is predicated upon the July 28 Order. Consequently, any grant of DIRECTV's RB-2A Application must be subject to the ultimate outcome of Spectrum Five's challenge to the July 28 Order.

¹ Order and Authorization *In re DIRECTV Enters., LLC, Application for Authorization to Launch and Operate DIRECTV RB-2, a Satellite in the 17/24 GHz Broadcasting Satellite Service at the 102.85° W.L. Orbital location*, File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, SAT-AMD-20080321-00077, Call Sign S2712, 2009 WL 2244508 (rel. July 28, 2009).

FACTUAL BACKGROUND

The RB-2A Application was filed by DIRECTV on August 7, 2009.² It was accepted for filing on October 2, 2009.³ In the RB-2A Application, DIRECTV seeks authority to launch and operate DIRECTV RB-2A, a geostationary BSS satellite to be located at the nominal 103° W.L. orbital location.⁴

The RB-2A Application is expressly predicated upon the July 28 Order. Specifically, in the RB-2A Application, DIRECTV states that “DIRECTV recently received authority to launch and operate another 17/24 GHz BSS satellite, DIRECTV RB-2, at this orbital location. Accordingly, this request does not seek authority to use any additional orbital locations or additional spectrum beyond that for which DIRECTV is already authorized.”⁵

The July 28 Order upon which the RB-2A Application is predicated, however, is the subject of a timely Petition for Reconsideration filed by Spectrum Five on August 27, 2009.⁶ In the Petition for Reconsideration, Spectrum Five argues, among other things, that DIRECTV’s proposed BSS Satellite exceeds the Commission’s power flux density (“PFD”) limits, and that DIRECTV’s assertion of compliance with the PFD limits was based on a profoundly defective methodology. Specifically, DIRECTV inappropriately substituted link budget values to

² *Application of DIRECTV Enterprises, LLC To Launch and Operate DIRECTV RB-2A, a Satellite in the 17/24 GHz Broadcasting Satellite Service at 103° W.L.*, FCC File No. SAT-AMD-20090807-00085 (Aug. 7, 2009).

³ *See* FCC, Public Notice, Policy Branch Information: Satellite Space Applications Accepted for Filing, Report No. SAT-00636, at p. 1 (Oct. 2, 2009).

⁴ RB-2A Application at p. 1.

⁵ *Id.* (footnote omitted; citing Order of July 28, 2009).

⁶ Petition for Reconsideration of Spectrum Five LLC, *In re DIRECTV Enters., LLC, Application for Authorization to Launch and Operate DIRECTV RB-2, a Satellite in the 17/24 GHz Broadcasting Satellite Service at the 102.85° W.L. Orbital location*, File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, SAT-AMD-20080321-00077, Call Sign S2712 (Aug. 27, 2009).

determine its PFD levels, resulting in a gross understatement of the PFD levels of the proposed satellite. Spectrum Five also showed that, in including an adjustment for clouds in its PFD methodology, DIRECTV failed to demonstrate compliance for all conditions, including clear-sky conditions, as required by Commission regulations.⁷ As a result, DIRECTV's application was defective and should have been dismissed.

The Bureau, however, not only failed to dismiss the application, but allowed DIRECTV to implicitly amend the application by means of an *ex parte* filing nearly eleven months after the date for amendments to such applications were due to be filed. As a result of these and other errors (as set forth in Spectrum Five's petition for reconsideration), the Bureau authorized DIRECTV to launch and operate a grossly over-powered satellite that, if launched, would create harmful interference with other satellites and afford DIRECTV grossly unfair advantages in the marketplace. As of this date, Spectrum Five's Petition for Reconsideration is pending before the Bureau.

ARGUMENT

By DIRECTV's own admission, the RB-2A Application rises and falls on the July 28 Order. Thus, any grant of DIRECTV's RB-2A Application must be conditioned on the resolution of Spectrum Five's challenge to that Order. In analogous circumstances, the Commission has conditioned grants of applications on the outcome of pending, related cases.⁸

⁷ See 47 C.F.R. § 25.208(w).

⁸ See *In re Auction 65 Public Notice Regarding Long Form/FCC Form 601 Applications Accepted for Filing*, 21 FCC Rcd. 13010, 13012 n.16 (2006) (noting that Commission generally does not defer grant of license applications until pending proceedings are complete, but rather conditions the grant of such licenses on the outcome of pending proceedings); *In re Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, 20 FCC Rcd. 19696, 19724-25 (2005) ("Globalstar, whose 2 GHz MSS license was cancelled by the International Bureau for failing to meet its first milestone, opposes any reassignment or reallocation of 2 GHz MSS spectrum before the Commission acts on its petition for reconsideration of the Order

Such a practice allows for the expeditious processing of applications, but also both assures that decision-making in related cases is consistent and avoids prejudging the merits of pending, related actions. Moreover, the relief requested here would not prejudice DIRECTV.

Accordingly, the Bureau should follow the Commission's established practice and condition any grant of DIRECTV's RB-2A Application on the outcome of the pending proceeding on Spectrum Five's Petition for Reconsideration.

CONCLUSION

For the foregoing reasons, Spectrum Five respectfully requests that any grant of DIRECTV's RB-2A Application be conditioned on the resolution of Spectrum Five's Petition for Reconsideration of the July 28 Order that forms the predicate for DIRECTV's RB-2A Application.

affirming the cancellation of its license. ICO and TMI respond that any spectrum reassignment to them could be made subject to the outcome of Globalstar's petition for reconsideration. We agree, and will condition our modifications of ICO's and TMI's spectrum reservations accordingly. We will address Globalstar's substantive concerns in the context of its petition for reconsideration.”) (footnotes omitted); *In re Application of DIRECTV Enters., LLC Request for Special Temporary Authority for the DIRECTV 5 Satellite*, 19 FCC Rcd. 15529, 15534 (2004) (per International Bureau) (“We note that Pegasus filed a petition for reconsideration of the *Hughes/News Corp.* transfer, alleging in part that there are adverse competitive effects resulting from DIRECTV's use of the 72.5° W.L. orbital location, and that these effects warrant overturning the grant of its transfer application. To avoid pre-judging the reconsideration proceeding, we condition the blanket earth station license on the outcome of the reconsideration proceeding.”) (footnote omitted); *In re Nelsat 28 Company*, 12 FCC Rcd. 7727 (1997) (Order of the International Bureau modifying, on its own motion, prior grant of authority to construct, launch, and operate satellite in order to condition grant on outcome of investigation of alleged misconduct by owner of a co-owner of the applicant); *In re Application of Dominion Video Satellite, Inc.*, 10 FCC Rcd. 10480, 10481 (1995) (per International Bureau) (“Accordingly, subject to resolution of Dominion's pending petition for reconsideration, we will assign channels 25–32 at orbital position 61.5° to Dominion for its eight authorized eastern channels.”) (footnote omitted).

David Wilson
President
Spectrum Five LLC
1776 K Street, N.W., Suite 200
Washington, D.C. 20006
(202) 293-3483

Respectfully submitted,

s/s Howard W. Waltzman
Howard W. Waltzman
Adam C. Sloane
Mayer Brown LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000
Counsel to Spectrum Five, LLC

October 28, 2009

CERTIFICATE OF SERVICE

I, Howard W. Waltzman, hereby certify that on this 28th day of October, 2009, I caused to be delivered a true copy of the foregoing by first-class United States mail, postage prepaid, upon the following:

William M. Wiltshire
Wiltshire & Grannis LLP
1200 18th Street, N.W.
Washington, D.C. 20036
Counsel for DIRECTV Enterprises LLC

s/s Howard W. Waltzman
Howard W. Waltzman