

**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 FOR RECONSIDERATION
of
SPECTRUM FIVE LLC**

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January 19, 2010

Spectrum Five LLC (“Spectrum Five”), by its attorneys and pursuant to Section 1.106 of the Commission’s Rules,¹ hereby seeks reconsideration of the International Bureau’s order granting authority to DIRECTV Enterprises, LLC (“DIRECTV”) to construct and launch its 17/24 GHz Broadcasting-Satellite Service (“BSS”) geostationary orbit space station, DIRECTV RB-2A, Call Sign S2796.² The order for which reconsideration is being sought was placed on Public Notice on December 18, 2009.³ The grant of authority to DIRECTV to construct and launch RB-2A is flawed. The grant should be rescinded, or, at the very least, should be expressly conditioned upon the outcome of a pending proceeding challenging the grant of construction, launch, and operating authority to DIRECTV’s RB-2 space station.⁴

ARGUMENT

In granting DIRECTV’s application to construct and launch DIRECTV RB-2A, the International Bureau (“Bureau”) allowed DIRECTV to jump the first-come, first-served licensing queue over Spectrum Five’s prior-filed, conflicting application to construct, launch, and operate a 17/24 GHz BSS space station at the nominal 103° W.L. orbital location.⁵ 17/24

¹ 47 C.F.R. § 1.106.

² See Launch & Operating Authority, Grant in Part, Deferral in Part, DIRECTV Enterprises LLC, IBFS File No. SAT-LOA-20090807-00085, Call Sign S2796, Stamp Grant, dated December 15, 2009.

³ See FCC, Public Notice: Policy Branch Information, Actions Taken, Report No. SAT-00656, DA No. 09-2607, dated Dec. 18, 2009.

⁴ On January 8, 2010, DIRECTV’s application to *operate* RB-2A was granted subject to conditions. See Operating Authority, Grant, Subject to Conditions, DIRECTV Enterprises LLC, IBFS File No. SAT-LOA-20090807-00085, Call Sign S2796, Stamp Grant, dated January 8, 2010. The filing of the instant petition—which focuses solely on the grant of construction and launch authority in the December 2009 order—is in no way intended to waive a subsequent challenge to the separate order granting conditional operating authority, and Spectrum Five reserves its right to file a petition for reconsideration of the operating authority order within the prescribed period of time.

⁵ See Spectrum Five LLC, Petition for Declaratory Ruling to Serve the U.S. Market from the 103.15° W.L. Orbital Location in the 17/24 GHz Broadcasting Satellite Service Band, File No.

GHz BSS space stations, like RB-2A, are subject to first-come, first-served processing.⁶ The Bureau's grant of a lower-in-the-queue application without first considering an earlier-filed proposal with which the application is in direct conflict plainly violates the Commission's first-come, first-served processing rules.⁷ That is exactly what happened here: the Bureau granted DIRECTV authority to launch RB-2A without first considering Spectrum Five's prior-filed application. Accordingly, the grant of launch authority for DIRECTV RB-2A violated the Commission's processing rules for 17/24 GHz BSS space stations, and should be rescinded.⁸

In addition, the Bureau failed to condition its grant of launch authority for RB-2A on the outcome of Spectrum Five's pending request for reconsideration of the grant of construction, launch, and operating authority for DIRECTV RB-2. Spectrum Five filed a petition to condition any grant of DIRECTV's RB-2A application on the outcome of the RB-2 proceeding.⁹ In the petition to condition any grant of the RB-2A application, Spectrum Five noted that DIRECTV

SAT-LOI-20081119-00217, Call Sign S2778. Spectrum Five's request in Call Sign S2778 was filed on November 19, 2008 (nearly nine months before DIRECTV submitted its RB-2A application), and was placed on public notice on October 23, 2009 as acceptable for filing. *See* FCC, Public Notice: Policy Branch Information, Satellite Space Applications Accepted for Filing, Report No. SAT-00641, dated Oct. 23, 2009.

⁶ *See generally* Report & Order & Further Notice of Proposed Rulemaking, *In re Establishment of Policies & Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-Directionally in the 17.3 -17.8 GHz Frequency Band*, IB 06-123, FCC 07-76, 22 FCC Rcd. 8842, 8844, 8849 (rel. May 4, 2007).

⁷ *See* 47 C.F.R. § 25.158(b) ("Applications for GSO-like satellite system licenses will be placed in a queue and considered in the order that they are filed") (emphasis supplied).

⁸ DIRECTV could, perhaps, have been permitted to launch under a petition for Special Temporary Authority. DIRECTV did not do so, however, and the Bureau did not issue a Special Temporary Authority grant.

⁹ *See* Petition of Spectrum Five LLC to Condition Any Approval of DIRECTV's Application on Spectrum Five's Related Pending Petition for Reconsideration (dated Oct. 28, 2009 and filed in File No. SAT-LOA-20090807-00085, Call Sign S2796).

itself had acknowledged that its RB-2A application was predicated upon the order granting DIRECTV authority to construct, launch, and operate RB-2.¹⁰ DIRECTV did not oppose Spectrum Five's condition request. Nevertheless, the Bureau did not condition the grant of construction and launch authority for RB-2A on the outcome of Spectrum Five's pending petition for reconsideration of the RB-2 order. This was error, and the grant of authority to launch RB-2A should accordingly be rescinded, or, at a minimum, appropriately conditioned as requested by Spectrum Five.

CONCLUSION

The grant of construction and launch authority for RB-2A violated the first-come, first-served process mandated by the Commission's rules and, accordingly, was erroneous and should be rescinded. Moreover, even if it were appropriate to consider and grant DIRECTV's RB-2A construction and launch authority application, the Bureau should have conditioned any such grant on the outcome of Spectrum Five's pending request for reconsideration of the RB-2 Order and Authorization.

Thus, for the foregoing reasons, the grant of launch authority for RB-2A should be rescinded or modified to condition such authority on the outcome of the RB-2 proceeding.

¹⁰ See *id.* at 1 (citing 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), and 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)).

Respectfully submitted,

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CERTIFICATE OF SERVICE

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