

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

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<i>Application of</i>	)	
	)	
<b>DIRECTV ENTERPRISES, LLC</b>	)	File No. SAT-LOA-20090807-00085
	)	
For Authorization to Launch and	)	Call Sign: S2796
Operate DIRECTV RB-2A, a Satellite	)	
in the 17/24 GHz Broadcasting Satellite	)	
Service at the 103° W.L. Location	)	
_____	)	

**OPPOSITION TO PETITION FOR RECONSIDERATION**

DIRECTV Enterprises, LLC (“DIRECTV”) hereby opposes the petition by Spectrum Five LLC (“Spectrum Five”)<sup>1</sup> for reconsideration of the International Bureau’s order granting authority to operate the DIRECTV RB-2A 17/24 GHz BSS payload.<sup>2</sup> Spectrum Five argues that the authorization should not have been issued, should have been issued only as a special temporary authorization (“STA”), or should have been conditioned upon the outcome of another Spectrum Five petition for reconsideration pending in another proceeding. Spectrum Five has made these arguments before: yet again, they are based on a flawed application of the Commission’s procedures and precedents, as well as a chimerical notion of “harm” allegedly arising from the Bureau’s action. Accordingly, the Bureau should expeditiously dismiss this petition.

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<sup>1</sup> Petition for Reconsideration of Spectrum Five LLC, IBFS File No. SAT-LOA-20090807-00085 (filed Feb. 16, 2010) (“S5 Petition”).

<sup>2</sup> See Grant Stamp, IBFS File No. SAT-LOA-20090807-00085 (Jan. 8, 2010) (“DRB2A Authorization”).

In its application, DIRECTV sought authority to launch and operate DIRECTV RB-2A, a precursor of the DIRECTV RB-2 17/24 GHz BSS satellite already licensed at the same orbital location. In response, Spectrum Five filed a petition requesting that any grant of the application be conditioned on the outcome of its petition for reconsideration of the DIRECTV RB-2 authorization.<sup>3</sup> In light of an impending launch date, the Bureau granted DIRECTV authority to construct and launch this payload, but deferred consideration of authority for operation of the payload. Subsequently, it granted operational authority in the DRB-2A Authorization.

Spectrum Five asserts that the grant of operational authority was in error because it allowed DIRECTV to jump the first come, first served licensing queue, so that the later-filed DIRECTV RB-2A application was processed before the earlier-filed Spectrum Five application to serve the U.S. from the same slot.<sup>4</sup> This argument totally ignores the fact that DIRECTV currently holds a Commission authorization to operate a 17/24 GHz BSS satellite at this orbital location. Indeed, as DIRECTV has pointed out, under the Commission's first come, first serve processing rules, Spectrum Five's application should already have been dismissed as a consequence of the grant of DIRECTV's authorization.<sup>5</sup> Neither Spectrum Five's fervent desires nor the pendency of its petition for reconsideration alter the situation.<sup>6</sup> DIRECTV, not Spectrum Five, is the Commission licensee at this slot for 17/24 GHz BSS operations, and the DRB2A Authorization was granted in that context – which is entirely consistent with the Commission's processing rules.

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<sup>3</sup> See Petition of Spectrum Five LLC to Condition Any Approval of DIRECTV's Application on Spectrum Five's Related Pending Petition for Reconsideration, IBFS File No. SAT-LOA-20090807-00085 (Oct. 28, 2009).

<sup>4</sup> S5 Petition at 1-2.

<sup>5</sup> See Petition to Deny, IBFS File No. SAT-LOI-20081119-00217 (Oct. 28, 2009).

<sup>6</sup> See, e.g., 47 C.F.R. § 1.102(b) (non-hearing action taken by delegated authority is effective upon release or public notice unless stay is granted).

Moreover, even were this not the case, grant of the DRB2A Authorization would have been both appropriate and consistent with past Commission practice.

Allowing the temporary use of unused orbital resources permits the public to receive services that would not otherwise be available. Consequently, over the past two and one half decades, the Commission has granted a variety of satellite operators temporary authority to operate satellites at orbit locations that are not regularly assigned to them, including satellites that did not meet its technical requirements. In issuing such authority, however, the Commission has been mindful to ensure that operations do not adversely impact regularly licensed satellite systems, and it has conditioned grants accordingly.<sup>7</sup>

Thus, in past cases where an operator did *not* have operational authority at a particular slot, the Commission nonetheless granted conditional authorizations. Here, DIRECTV has such authority – but even if that were not the case (as a result of reconsideration or otherwise), the authorization granted in this proceeding would fall squarely in line with the prior occasions on which the Commission has issued conditional authority to operate pending launch by a regularly licensed system.

Moreover, Spectrum Five has not explained why the grant of operating authority without the condition it had requested would in any way prejudice the interests of *anyone*. While the Bureau did not condition the DRB2A Authorization as requested by Spectrum Five, it did impose conditions such that grant is without prejudice to the pending reconsideration and DIRECTV must terminate its operation of DIRECTV RB-2A when a regularly authorized 17/24 GHz BSS space station authorized to serve the U.S. commences operation at this slot unless such operations have been coordinated.<sup>8</sup> In other words, *if* Spectrum Five is successful in challenging

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<sup>7</sup> *PanAmSat Licensee Corp.*, 19 FCC Rcd. 2012, ¶ 11 (Int'l Bur. 2004) (citing cases). *See also SES Americom, Inc.*, 20 FCC Rcd. 436, ¶ 8 (Int'l Bur. 2005) (same); *ARC Professional Services Group*, 5 FCC Rcd. 5398, ¶ 8 (CCB 1990) (same). Indeed, although Spectrum Five asserts that only an STA could have been granted here, the Commission has in the past actually responded to STA requests by granting conditional licenses. *See, e.g., PanAmSat Corp.*, 15 FCC Rcd. 21802 (Int'l Bur. 1999) (granting a conditional license in response to an STA request).

<sup>8</sup> *See* DRB2A Authorization, Condition 2.

the DIRECTV RB-2 authorization, and *if* Spectrum Five subsequently is authorized to access the U.S. market from 103° W.L., and *if* Spectrum Five actually manages to successfully launch a 17/24 GHz BSS satellite to that orbital location, DIRECTV would have to cease operations of DIRECTV RB-2A unless it had a coordination agreement with Spectrum Five. DIRECTV submits that this condition more than satisfies Spectrum Five's request.

Spectrum Five *does*, however, make a curious accusation against DIRECTV, stating that "DIRECTV's motives in this matter are clear: DIRECTV wants to be the first satellite operator to provide 17/24 GHz BSS commercial service."<sup>9</sup> To this, DIRECTV can only respond that it is guilty as charged. Indeed, the evidence is plain for all to see. DIRECTV was the first to seek authority to provide BSS in this band, filing applications and a petition for rulemaking to allocate the spectrum over a decade ago,<sup>10</sup> and DIRECTV continued to be a driving force throughout the rulemaking process (in which Spectrum Five chose not to participate) that culminated in the adoption of service rules for the band. Apparently, to Spectrum Five, such long-term commitment culminating in the actual provision of service is to be discouraged, or at least looked upon with suspicion. Fortunately, the Commission has taken precisely the opposite view and recognized the value of putting spectrum resources to productive use, and the public interest has been well served as a result.

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<sup>9</sup> S5 Petition at 4.

<sup>10</sup> See *Establishment of Policies and 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 Broadcasting Satellite Service Operating Bi-directionally in the 17.3-17.7 GHz Frequency Band*, 21 FCC Rcd 7426, ¶ 6 n.20 (2006) (discussing history of the band).

DIRECTV is the Commission licensee for 17/24 GHz BSS operations at 103° W.L., and its operations are subject to conditions that protect any licensed operator in the band that one day launches to that slot. Spectrum Five's petition for reconsideration essentially ignores both of these facts. The Commission cannot do the same, and instead should expeditiously dismiss Spectrum Five's petition.

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 26th day of February 2010, a copy of the foregoing  
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/s/  
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