

**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
_____)	

**REPLY IN SUPPORT OF PETITION FOR RECONSIDERATION
of
SPECTRUM FIVE LLC**

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Spectrum Five LLC (“Spectrum Five”), by its attorneys and pursuant to Section 1.106 of the Commission’s Rules,¹ hereby files this Reply in support of its Petition for Reconsideration of the order of the International Bureau (“Bureau”) granting authority to DIRECTV Enterprises, LLC (“DIRECTV”) to operate DIRECTV RB-2A—DIRECTV’s 17/24 GHz Broadcasting-Satellite Service (“BSS”) geostationary orbit space station—at the 102.765° W.L. orbital location.² In this Reply, Spectrum Five will address the Opposition to Petition for Reconsideration filed by DIRECTV.³ As Spectrum Five will show, DIRECTV’s arguments fail to rebut Spectrum Five’s demonstration of the flaws in the RB-2A Grant. Accordingly, Spectrum Five’s Petition for Reconsideration should be upheld.

ARGUMENT

I. **THE BUREAU VIOLATED THE FIRST-COME, FIRST-SERVED LICENSING SCHEME APPLICABLE TO 17/24 GHz SPACE STATIONS**

As Spectrum Five demonstrated in the Petition for Reconsideration, the Bureau’s consideration of the RB-2A Application violated the first-come, first-served licensing framework

¹ 47 C.F.R. § 1.106.

² See Petition for Reconsideration of Spectrum Five LLC, File No. SAT-LOA-20090087-00085, Call Sign S2796 (filed Feb. 16, 2010) (“Petition for Reconsideration”); 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 (hereinafter, “RB-2A Grant”) (granting 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-LOA-20090807-00085 (Aug. 7, 2009) (hereinafter “RB-2A Application”)).

³ See Opposition to Petition for Reconsideration, File No. SAT-LOA-20090807-00085, Call Sign S2796 (filed February 26, 2010) (“Opposition”). Ciel Satellite Limited Partnership (“Ciel”) also filed comments on Spectrum Five’s Petition for Reconsideration. See Comments of Ciel Satellite Limited Partnership, File No. SAT-LOA-20090807-00085, Call Sign S2796 (filed Feb. 26, 2010). In those Comments, Ciel “requests that in any decision addressing the instant Spectrum Five Petition, the Commission take no action that would conflict with international law and Commission policies with respect to coordination requirements and the obligation of a U.S. licensee to yield to a foreign-licensed network with ITU priority absent a coordination agreement.” *Id.* at 3. Spectrum Five does not address Ciel’s Comments in this Reply.

for 17/24 GHz BSS space stations.⁴ The Commission’s regulations are clear: “Applications for GSO-like satellite system licenses will be placed in a queue and considered in the order that they are filed”⁵ Here, the Bureau “considered” DIRECTV’s lower-in-the-queue RB-2A Application without first considering Spectrum Five’s prior-filed Application,⁶ thereby violating the first-come, first-served processing framework.

DIRECTV seeks to justify this clear violation by arguing, in essence, that, because “DIRECTV currently holds a Commission authorization to operate a 17/24 GHz BSS satellite at this orbital location,” DIRECTV is entitled to do whatever it wants at that orbital location.⁷ That is clearly not the case. While DIRECTV has been granted a license for *RB-2*, that satellite is a very different satellite from *RB-2A*, with different coverage patterns and power levels.⁸ The mere fact that DIRECTV received a license to construct, launch, and operate RB-2 at the 103° W.L. orbital location, which is subject to a petition for reconsideration, does not mean that DIRECTV may launch any satellite it wants into the slot—especially when the power levels and coverage patterns exceed the technical envelope of the RB-2 authorization.

⁴ 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).

⁵ 47 C.F.R. § 25.158(b).

⁶ 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. SAT-LOI-20081119-00217, Call Sign S2778 (filed Nov. 19, 2008).

⁷ Opposition at p. 2. See also *id.* at p. 5 (“DIRECTV is the Commission licensee for 17/24 GHz BSS operations at 103° W.L. . . .”).

⁸ See Petition for Reconsideration at pp. 7-8.

Moreover, the Bureau implicitly rejected DIRECTV's argument in this regard when it emphasized in the RB-2A Grant that nothing that DIRECTV does pursuant to the RB-2A Grant (which has a separate call sign from RB-2) can be used to satisfy the licensing conditions of RB-2.⁹ The Bureau's conclusion in this regard not only undermines DIRECTV's assertion that the RB-2 authorization effectively provides DIRECTV unbridled use of the orbital slot, but also makes the Bureau's consideration and grant of the RB-2A Application all the more inexplicable.

DIRECTV also contends that the RB-2A Grant did not violate the first-come, first-served processing framework because Spectrum Five's earlier-filed Application for the same orbital slot should have been dismissed upon the grant of the RB-2 Application. DIRECTV ignores the fact, however, that if Spectrum Five's Application should have been dismissed upon the authorization of RB-2, so too should the RB-2A Application, because the RB-2A Application also conflicts with the RB-2 authorization.¹⁰ Moreover, if the Bureau dismisses Spectrum Five's Application, causing Spectrum Five to lose its place in the queue, the consideration of the RB-2A Application would represent an even greater abuse of the first-come, first-served processing framework.¹¹

II. PRIOR PRACTICE DOES NOT SUPPORT THE RB-2A GRANT

DIRECTV also seeks to justify the RB-2A Grant by arguing that it is consistent with prior Commission practice. Specifically, DIRECTV cites four cases in which conditional

⁹ RB-2A Grant at para. 3.

¹⁰ See Petition for Reconsideration at p. 3 & n.9. DIRECTV's reliance on the RB-2 authorization also is misplaced because that authorization was erroneous, as Spectrum Five demonstrated in its Petition for Reconsideration in the RB-2 proceeding. See 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 102.825° W.L. Orbital location, File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, SAT-AMD-20080321-00077, Call Sign S2712 (Aug. 27, 2009).

¹¹ Petition for Reconsideration at p. 3.

authorizations for the temporary use of unused orbital resources were granted.¹² These cases, however, do not support the RB-2A Grant.

First, as Spectrum Five showed in its Petition for Reconsideration, the RB-2A Grant is not, by its terms, temporary at all. To the contrary, the Bureau issued DIRECTV a permanent (i.e., 15-year term) license that lacks any express temporal limitations on RB-2A's operation at the 103° W.L. orbital location.¹³ The Bureau's statement that RB-2A's operations must terminate "when . . . a space station regularly authorized to provide service to the United States pursuant to the Commission's first-come, first-served processing framework commences operations at the 103° W.L. location, or its offsets . . ." is a mere condition on the open-ended grant—one which would potentially permit the operation of RB-2A at the 103° W.L. orbital location for the entire life of the satellite.¹⁵

In the cases cited by DIRECTV, by contrast, the grants were expressly stated to be "temporary."¹⁶ DIRECTV, however, makes no attempt to show that the RB-2A Grant is, in fact, *temporary*, and, therefore, its reliance on cases that expressly provided for *temporary* grants of authority to operate at otherwise unused orbital locations is misplaced.

¹² See Opposition at p. 3 & n.7.

¹³ See Petition for Reconsideration at pp. 4-5.

¹⁴ RB-2A Grant at para. 2.

¹⁵ See Petition for Reconsideration at p. 5.

¹⁶ See Memorandum Opinion and Order, *In re SES Americom, Inc. for Temporary Authority to Operate the AMC-15 Satellite at 117° W.L. and 113° W.L.*, 20 FCC Rcd. 436, at paras. 1, 13 (rel. Jan. 6, 2005); Order & Authorization, *In re PanAmSat Licensee Corp. New Application for Launch Authority* (hereinafter "*PanAmSat II*"), 19 FCC Rcd. 2012, at paras. 14, 16, 21 (rel. Feb. 6, 2004); Order & Authorization, *In re PanAmSat Corp. Request for Special Temporary Authority to Operate a Space Station at 60° >> W.L.* (hereinafter "*PanAmSat I*"), 15 FCC Rcd. 21802, at paras. 1, 11, 12 (rel. Oct. 26, 1999); Order & Authorization, *In re ARC Professional Services Group, Inc. for Authority to Operate a Communications Satellite Providing Domestic Fixed Service at 62° W.L. on a Temporary Basis*, 5 FCC Rcd. 5398, at para. 1 (rel. Sept. 4, 1990).

In addition, only two of the four cases cited by DIRECTV—specifically, *In re SES Americom* and *PanAmSat II*¹⁷—post-date the adoption of the first-come, first-served processing framework in the *First Space Station Reform Order*.¹⁸ In neither of those cases did the Bureau consider the interplay between the first-come, first-served processing framework and the grants of temporary authority, and in neither of them did anyone raise an objection based on the first-come, first-served processing rules.¹⁹ Moreover, the grants in those two post-*Space Station Reform Order* cases were very different from the grant here, not just because—as noted above—they were expressly denominated to be temporary, but also because the temporary operations authorized by the Bureau were anticipated to be far shorter in duration than the open-ended grant at issue here.

As Spectrum Five noted in its Petition for Reconsideration—and as DIRECTV has *not* disputed—the RB-2A Grant would potentially allow RB-2A to operate for a decade or more.²⁰ The *SES Americom* order, by contrast, authorized operations for a mere *60 days* at each approved orbital location.²¹ And the space station at issue in *PanAmSat II* was nearly twenty years old. In fact, the space station was not operating in geostationary position, but rather in “an extremely high inclination of more than 7.8°,” making it “highly unlikely that [the satellite] will be capable

¹⁷ See note 16, *supra*.

¹⁸ See First Report & Order & Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report & Order in IB Docket No. 02-54, *In re Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, para. 73 (rel. May 19, 2003).

¹⁹ In *PanAmSat II*, a commenter—New Skies Satellites N.V. (“New Skies”)—with higher ITU priority requested conditions on any grant. See *PanAmSat II*, 19 FCC Rcd. at para. 5. But New Skies did not allege that it was higher in the first-come, first-served queue, and, in any case, New Skies’ request for conditions was mooted by the conditions that were imposed, which were virtually identical to the ones requested. See *id.*, paras. 5, 15, 17.

²⁰ See Petition for Reconsideration at pp. 5, 7.

²¹ See Memorandum & Order, *In re SES Americom, Inc. for Temporary Authority to Operate the AMC-15 Satellite at 117° W.L. and 113° W.L.*, 20 FCC Rcd. 436, at paras. 1, 13(e).

of useful operation over a significant portion of a new 15-year license term.”²² Moreover, in *PanAmSat II*, the Bureau imposed customer-notification conditions regarding the temporary and contingent operations of the satellite.²³ No such conditions appear in the RB-2A Grant. In light of these substantial differences between the RB-2A Grant, on the one hand, and the *SES Americom* and *PanAmSat II* grants, on the other, these decisions cannot excuse the failure here to adhere to the first-come, first-served processing framework.

Nor are DIRECTV’s other two cases any more supportive of the RB-2A Grant. First, as noted above, both of those cases *predated* the adoption of the first-come, first-served licensing framework in the 2003 *First Space Station Reform Order*,²⁴ so in neither case could the Bureau have considered the interplay between the first-come, first-served processing framework and applications for temporary authority to operate in unused orbital locations.

Furthermore, in *PanAmSat I*, the Bureau concluded that, because of the ITU filing history surrounding the affected orbital arc, it would be “virtually impossible” for a United States-licensed satellite to operate at the designated orbital position and, therefore, that “[g]iven the Brazilian, Argentine, and Venezuelan [higher ITU-priority] filings, we will not issue a regular U.S. license for a co-coverage, co-frequency U.S. satellite at 60° >>W.L. Further, we will not attempt to coordinate such a satellite.”²⁵ Hence, there was no possibility in the *PanAmSat I* proceeding that, in issuing a temporary grant for the operation at unused orbital locations, the Bureau would consider a lower-in-the-queue applicant for a United States license before considering a higher-in-the-queue applicant. Moreover, the entities with higher ITU priority did

²² *PanAmSat II*, 19 FCC Rcd. 2012, at para. 9.

²³ *Id.* at para. 17(c) & (d).

²⁴ See notes 16 and 18, and accompanying text, *supra*.

²⁵ See *PanAmSat I*, 15 FCC Rcd. 21802, at paras. 5-7.

not object to the limited use sought in the proceeding.²⁶ Here, by contrast, a higher-in-the-queue applicant for a United States authorization—that is, Spectrum Five— has been passed over by the Bureau in violation of explicit rules regarding the order of application processing, *and* Spectrum Five has objected to that fact. Thus, the *PanAmSat I* decision addressed completely different circumstances than those at issue here, and provides no precedential support for the RB-2A Grant.²⁷

DIRECTV fares no better in citing *In re Arc Professional Services Group, Inc.*²⁸ That proceeding involved a temporary authorization, predated the adoption of the first-come, first-served processing framework, and concerned an orbital location that no domestic fixed-satellite licensee had sought to serve.²⁹

Thus, the cases cited by DIRECTV do not excuse the consideration of DIRECTV's RB-2A Application before Spectrum Five's prior-filed Application. Rather, the consideration of the RB-2A Application before Spectrum Five's Application was a clear violation of the Commission's first-come, first-served processing framework.

III. SPECTRUM FIVE IS HARMED BY THE RB-2A GRANT

DIRECTV also suggests that the RB-2A Grant does not prejudice Spectrum Five's—or anyone else's—interests.³⁰ According to DIRECTV, Spectrum Five is protected by the conditions imposed in the RB-2A Grant—specifically, those stating that the RB-2A Grant is

²⁶ *See id.* at para. 9.

²⁷ Moreover, in *PanAmSat I*, unlike here, the grant was conditioned on a customer-notification requirement. *See id.* at paras. 13, 14.

²⁸ *See* note 16, *supra*.

²⁹ *See In re Arc Professional Services Group, Inc. for Authority to Operate a Communications Satellite Providing Domestic Fixed Service at 62° W.L. on a Temporary Basis*, 5 FCC Rcd. 5398, at para. 5.

³⁰ Opposition at pp. 3-4.

without prejudice to Spectrum Five’s pending request for reconsideration of the RB-2 authorization and requiring DIRECTV to terminate RB-2A’s operations when a regularly authorized 17/24 GHz BSS space station that is authorized to serve the United States commences operations at the pertinent orbital slot.³¹

As Spectrum Five noted in its Petition for Reconsideration, the RB-2A Grant’s statement that the authorization was “without prejudice” to the pending request for reconsideration of the RB-2 authorization³² says nothing about the consequences for *RB-2A* if the RB-2 reconsideration request is granted. For all that the RB-2A Grant actually says, even if Spectrum Five’s RB-2 reconsideration request is granted, RB-2A could nonetheless be allowed to continue to operate. If RB-2A could be allowed to continue to operate despite a decision granting Spectrum Five’s RB-2 reconsideration request, Spectrum Five will have lost the benefit of having filed its 103° W.L. orbital location Application nine months before the RB-2A Application was filed.³³ Thus, DIRECTV would reap an unmerited and unfair advantage in the marketplace, notwithstanding the fact that, according to DIRECTV, the RB-2A Grant was approved “in th[e] context [of the RB-2 authorization].”³⁴

³¹ *Id.*

³² RB-2A Grant at para. 2.

³³ Spectrum Five’s Application in Call Sign S2778 (*see* note 6, *supra*) was filed on November 19, 2008 (nearly nine months before DIRECTV submitted its RB-2A Application).

³⁴ Opposition at p. 2. As Spectrum Five has demonstrated, DIRECTV’s reliance on the RB-2 authorization is misguided. *See* pp.2-3, *supra*. DIRECTV’s repeated invocation of the RB-2 authorization also ignores the fact that the power flux density (“PFD”) demonstration in the RB-2A Application differs materially from the demonstration in the RB-2 proceeding, notwithstanding DIRECTV’s repeated protests that the RB-2 PFD demonstration was correct. *See* Petition for Reconsideration at p. 8 n.22. At a minimum, DIRECTV’s alteration of the PFD methodology in the RB-2A Application undercuts the RB-2 PFD demonstration and makes DIRECTV’s reliance on the RB-2 authorization here ironic, at best.

DIRECTV may regard this scenario as unlikely, but nowhere in DIRECTV's Opposition or in the RB-2A Grant itself is there a clear statement that, upon a grant of Spectrum Five's RB-2 reconsideration request, RB-2A must cease operations immediately. And the absence of such a condition is clearly harmful to Spectrum Five.

Nor are Spectrum Five's interests adequately protected by the condition stating that "when a 17/24 GHz BSS space station regularly authorized to provide service to the United States pursuant to the Commission's first-come, first-served processing framework commences operations at the 103° W.L. location, or its offsets, DIRECTV must terminate operations on DIRECTV RB-2A space station . . . unless it has entered into a coordination agreement with the operator of the newly launched 17/24 GHz BSS space station."³⁵ Nothing in the RB-2A Grant explains how another space station might receive such an authorization, or whether Spectrum Five's place in the queue will be preserved until that happens. Accordingly, these conditions provide no basis for concluding that Spectrum Five was not harmed when a lower-in-the-queue application was considered before Spectrum Five's Application.

CONCLUSION

DIRECTV's arguments fail to rebut Spectrum Five's demonstration of the fundamental flaws of the RB-2A Grant. Moreover, DIRECTV has altogether neglected to respond to a significant number of Spectrum Five's arguments. For instance, DIRECTV does not address Spectrum Five's arguments that (i) the RB-2A Grant will effectively allow RB-2A to operate for upwards of a decade or more and (ii) the substantial differences between RB-2 and RB-2A precluded DIRECTV from relying on the RB-2 authorization as a basis for the RB-2A Application.

³⁵ RB-2A Grant at para. 2.

Thus, for the foregoing reasons, the grant of operating authority for RB-2A should be rescinded.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Howard W. Waltzman, hereby certify that on this 5th day of March, 2010, I caused to be delivered a true copy of the foregoing by electronic mail, upon the following:

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