

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

DIRECTV Enterprises, LLC)

Application for Authorization to Launch and)
Operate DIRECTV 15 at 103° W.L.)
_____)

File No. SAT-LOA-20140825-00094

PETITION TO DENY OR DEFER

Pursuant to Section 25.154(a) of the Commission’s rules,¹ DISH Operating L.L.C. (“DISH”) submits this petition requesting that the Commission deny or defer action on DIRECTV Enterprises, LLC’s (“DIRECTV”) above-captioned application (the “DIRECTV 15 Application”) for authority to launch and operate the DIRECTV 15 satellite on Ka-band Fixed Satellite Service (“FSS”) frequencies² at the nominal 103° W.L. orbital location.³ In particular, the Commission should deny or defer action on the DIRECTV 15 Application until either: (i) the Commission promptly acts on the pending application of SES Americom, Inc. (“SES

¹ 47 C.F.R. § 25.154; *see also Policy Branch Information: Satellite Space Applications Accepted for Filing*, Public Notice, Report No. SAT-01043 (Oct. 3, 2014).

² The proposed DIRECTV 15 satellite will carry a 17/24 GHz Broadcasting-Satellite Service (“BSS”) payload in addition to a Ka-band FSS payload and a 12/17 GHz Direct Broadcast Satellite (“DBS”) payload. *See* DIRECTV, Application for Authority to Launch and Operate DIRECTV 15, IBFS File No. SAT-LOA-20140825-00094, Narrative at 1 n.1 (Aug. 25, 2014) (“DIRECTV 15 Application”).

³ DISH is a party of interest in this proceeding by virtue of (i) its contractual rights to use the Canadian-licensed Ciel-6i payload in the 17/24 GHz BSS band at 103° W.L., which has International Telecommunication Union (“ITU”) date priority over the 17/24 GHz BSS payload proposed to be carried on the DIRECTV 15 satellite; and (ii) its pending U.S. market access application for a blanket earth station license to receive service from the Ciel-6i payload. *See* DISH Operating L.L.C., Application for Blanket Earth Station License, IBFS File No. SES-LFS-20140924-00752 (Sept. 24, 2014) (“DISH Ciel-6i Application”); *see also* DISH Operating L.L.C., Petition to Condition, IBFS File Nos. SAT-MOD-20140612-00066 & SAT-MOD-20140624-00075, at 2 (Sept. 2, 2014).

Americom”) for authority to operate the SES-3 satellite on C- and Ku-band frequencies at 103° W.L. (the “SES-3 Application”)⁴ and DISH’s related U.S. market access application to receive service from the Ciel-6i payload on SES-3 (the “DISH Ciel-6i Application”);⁵ or (ii) DIRECTV and Ciel Satellite Limited Partnership (“Ciel”), a Canadian affiliate of SES Americom, have completed coordination of their respective 17/24 GHz BSS payloads, including the Ciel-6i payload, at 103° W.L.

I. The FCC Has Granted Similar Relief Against the SES-3 Application

Denial or deferral of the DIRECTV 15 Application is warranted because the International Bureau (“Bureau”) earlier this year granted similar relief in response to DIRECTV’s petition to deny or defer the SES-3 Application.⁶ Because the DIRECTV 15 Application raises the same issues that prompted the Bureau in the *SES-3 Order* to take the unprecedented step of largely deferring action on the SES-3 Application,⁷ the Commission should apply the same treatment here.

Specifically, both the DIRECTV 15 Application and SES-3 Application share similar facts. Both applications seek U.S. authority to operate a satellite at the 103° W.L. nominal orbital location on existing licensed C-, Ku-, or Ka-band frequencies. Both applications seek such U.S. operating authority in order to provide replacement or supplemental capacity to support existing direct-to-home and other services to end users.⁸ Both applications further

⁴ See SES Americom, Application for Authority to Operate the SES-3 Replacement Satellite at 103° W.L., IBFS File No. SAT-RPL-20121228-00227, Narrative at 1 (Dec. 28, 2012) (“SES-3 Application”).

⁵ See DISH Ciel-6i Application, Narrative at 1.

⁶ See *SES Americom, Inc. Application for Authority to Operate the SES-3 Satellite at 103° W.L.*, 29 FCC Rcd 3678, ¶¶ 1, 8-9 (IB 2014) (“*SES-3 Order*”); DIRECTV, Petition to Deny or Defer, IBFS File Nos. SAT-RPL-20121228-00227 & SAT-AMD-20131113-00132 (Dec. 16, 2013).

⁷ See *SES-3 Order* ¶¶ 1, 8-9.

⁸ See SES-3 Application, Narrative at 4; DIRECTV 15 Application, Narrative at 1-3.

propose (but do not seek U.S. authority) to operate a satellite carrying a 17/24 GHz BSS payload that is already licensed (by the United States or Canada), but that remains subject to international coordination with the other satellite's 17/24 GHz BSS payload.⁹

Based upon these circumstances, the Bureau granted limited authority to operate SES-3 for beacon transmissions and telemetry, tracking, and command (“TT&C”) operations, but otherwise deferred action on the SES-3 Application in order to provide a period of time for Ciel and DIRECTV to coordinate their 17/24 GHz BSS payloads at 103° W.L.¹⁰ The Bureau based its decision to defer upon a desire to facilitate coordination of the 17/24 GHz BSS frequencies, even though no U.S. operating authority for those frequencies was requested under the SES-3 Application.¹¹

II. The FCC Should Apply the Same Treatment to Similarly Situated Parties

Although the Bureau's decision in the *SES-3 Order* is contrary to the weight of existing Commission precedent, the Commission should apply the same treatment to similarly situated parties.¹² While the Commission may justify any differential treatment with reasoned analysis, such an approach is not warranted here, because the DIRECTV 15 Application offers no factual or legal basis to support such disparate treatment vis-à-vis the SES-3 Application.¹³ Thus, the

⁹ See SES-3 Application, Narrative at 1 n.1; DIRECTV 15 Application, Narrative at 1 n.1; *SES-3 Order* ¶ 8.

¹⁰ See *SES-3 Order* ¶¶ 1, 8-9.

¹¹ See *id.*

¹² See *Airmark Corp. v. FAA*, 758 F.2d 685, 691 (D.C. Cir. 1985) (“Deference to agency authority or expertise, however, is not a license to ... treat like cases differently.”).

¹³ See *Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (“We have long held that an agency must provide an adequate explanation before it treats similarly situated parties differently.”); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965) (FCC must “do more than enumerate factual differences, if any between appellant and the other cases; it must explain the relevance of those differences”).

DIRECTV 15 Application should be subject to deferral of action to the same extent as the SES-3 Application, based upon the shared facts and issues relating to both applications.

If anything, Commission policy and precedent support equal treatment of the applications at issue by ensuring prompt review and permitting license grants prior to completion of coordination.¹⁴ Indeed, the Bureau’s decision to defer action on the SES-3 Application marks a substantial departure from established Commission policy and precedent. Prior to the *SES-3 Order*, the Commission consistently applied its policy and precedent requiring U.S. licensees to accept their licenses “subject to the outcome of the international coordination process” and to “assume the coordination risk when choosing [a] particular orbit location at the time it submitted its application.”¹⁵ Indeed, the Commission previously rejected requests to defer grant of satellite operating authority pending completion of coordination.¹⁶ Consequently, the Commission should reaffirm and consistently apply its longstanding policy and precedent authorizing satellite operations subject to completion of coordination, rather than effectively requiring the opposite (*i.e.*, requiring completion of coordination prior to authorizing satellite operations).

* * *

¹⁴ See Letter from Karis A. Hastings, Counsel for SES Americom, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-RPL-20121228-00227 & SAT-AMD-20131113-00132, at 1 (Oct. 24, 2014) (requesting prompt grant of the SES-3 Application, consistent with FCC precedent).

¹⁵ See *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, ¶ 96 (2003); see also *The 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*, Second Order on Reconsideration, 25 FCC Rcd 15718, 15724, ¶ 10 (2010).

¹⁶ See, e.g., *DIRECTV Enterprises, LLC*, File No. SAT-LOA-20090807-00085 (grant-stamped Jan. 8, 2010) (authorizing interim operations of RB-2A 17/24 GHz BSS payload even though DIRECTV had not commenced coordination); *SES Satellites (Gibraltar) Limited*, File Nos. SAT-PPL-20101103-00230 & SAT-APL-20110120-00015 (grant-stamped Oct. 13, 2011) (adding NSS-703 to the Permitted List and denying a request to condition license on completion of coordination); *Loral Spacecom*, 18 FCC Rcd 16374 (IB 2003) (adding Telstar 13 to the Permitted List prior to completion of coordination with another network having higher ITU priority).

DECLARATION

I declare under penalty of perjury that the forgoing Petition to Deny or Defer, and the factual statements therein, are complete and accurate to the best of my knowledge, information, and belief.

/s/
Alison A. Minea

Date: November 3, 2014

CERTIFICATE OF SERVICE

I, Hadass Kogan, hereby certify under penalty of perjury that the foregoing Petition to Deny or Defer was served on November 3, 2014, by depositing a true copy thereof with the United States Postal Service, first class postage paid, addressed to:

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/s/

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