

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

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MAY 16 2005  
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In the Matter of )

SPECTRUM FIVE LLC )

Petition for Declaratory Ruling )  
To Serve the U.S. Market Using )  
BSS Spectrum from the 114.5° W.L. )  
Orbital Location )

File Nos. SAT-LOI-20050312-00062  
SAT-LOI-20050312-00063

Call Signs: S2667 & S2668

Received  
MAY 18 2005  
Policy Branch  
International Bureau

**OPPOSITION TO PETITION FOR DECLARATORY RULING**

Pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309, and Section 25.154 of the Commission's Rules, 47 C.F.R. § 25.154, EchoStar Satellite L.L.C. ("EchoStar") hereby files this Opposition to the Spectrum Five LLC ("Spectrum Five") Petition for Declaratory Ruling To Serve the U.S. Market Using BSS Spectrum from the 114.5° W.L. Orbital Location. EchoStar has acknowledged the potential benefits from 4.5° orbital spacing for U.S. Direct Broadcast Satellite ("DBS") satellites. These benefits, however, depend on a crucial assumption -- that there would be no potential for unacceptable levels of interference from these so called "tweener" satellites to existing U.S. DBS networks and their millions of subscribers. Recent developments have now called that assumption into serious question. In particular, the increasing importance of "triple-feed" DBS antennas to EchoStar and U.S. DBS consumers in general has exacerbated the interference concerns associated with tweener satellites located in the vicinity of the prime CONUS DBS orbital slots.

Thus, before the Commission can authorize tweener satellites like those presented in Spectrum Five's applications for 114.5° W.L., it must first establish technical rules to ensure that these satellites do not limit the ability of existing DBS providers like EchoStar to take advantage of such innovations as multi-feed antennas that will assist them to compete more effectively with large digital cable providers, comply with the local programming carriage requirements, recently imposed by law, and deliver greater consumer benefits to the public.<sup>1</sup>

As the Commission is aware, EchoStar currently operates with significantly less available bandwidth than digital cable providers. This hinders its ability to compete on an equal footing in the Multiple Video Program Distribution ("MVPD") market. As the *2004 MVPD Competition Report* recognizes, the "cable industry has upgraded almost 91 percent of its plant to 750 MHz

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<sup>1</sup> There is also a serious question as to whether Spectrum Five has complied with the informational and technical requirements of the Commission's Rules. In finding Spectrum Five's predecessor Petition defective, the International Bureau concluded that it had not provided all of the information required under the Rules, such as a "sufficient technical showing that the proposed systems could operate satisfactorily if all assignments in the Broadcasting-Satellite Service ("BSS") and feeder link Plans were implemented," in accordance with Section 25.114(d)(13)(i). See Letter from Fern J. Jarmulnek to Todd M. Stansbury, DA 05-354, File No. SAT-LOI-20041228-00228 (Feb. 17, 2005) ("Dismissal Letter"). While Spectrum Five appears to have provide a partial interference analysis in its refiled Petition, it clearly does not demonstrate that the proposed operation of its tweener satellites could operate satisfactorily if all U.S. assignments in the BSS and feeder link plans were implemented. For example, Spectrum Five identifies numerous test points that substantially exceed the threshold change in overall equivalent protection margin (0.25 dB) that triggers the agreement seeking process under the ITU's rules. See Petition, Exhibit 1 to Technical Appendix, Attachment 2, at pp. 4-15. It simply is insufficient to assert, based upon these preliminary results, that coordination will be "readily achievable." See Petition at 6. Indeed, for some of the same reasons expressed in the Dismissal Letter, i.e., the failure to provide technical analyses demonstrating that the system's impact [on] other frequency assignments in the Region 2 Plan and any proposed modifications to the Region 2 Plan that have been received by the ITU/BR is negligible," the Bureau should once again dismiss the Petition as defective and unacceptable for filing. Dismissal Letter at 4. EchoStar reserves the right to make additional objections to the Petition.

capacity or higher.”<sup>2</sup> EchoStar has significantly less total bandwidth capacity to supply programming to its customers. In addition, the recently enacted Satellite Home Viewer Extension and Reauthorization Act (“SHVERA”) has complicated EchoStar’s efforts to expand its available bandwidth capacity, by requiring carriage of all local broadcast stations in any given market on a single dish.<sup>3</sup> One result of this new requirement is that EchoStar is actively exploring the deployment of triple-feed antennas. EchoStar is specifically considering development of a triple-feed antenna that would enable its subscribers to receive programming simultaneously from DBS satellites located at the 110°, 119°, and 129° W.L. orbital locations.<sup>4</sup>

While triple-feed antennas benefit consumers by allowing them to receive more programming on a single dish, the use of these antennas also complicates the interference analysis for tweener satellites that would operate at orbital slots located within or adjacent to the satellite arc used by a triple-feed antenna. Owing precisely to these concerns, EchoStar recently withdrew its pending applications for two tweener satellites at the 96.5° and 123.5° W.L. orbital locations.<sup>5</sup>

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<sup>2</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Eleventh Annual Report, FCC 05-13 ¶ 14 (rel. Feb. 4, 2005) (“2004 MVPD Competition Report”).

<sup>3</sup> See Section 203 of the Satellite Home View Extension and Reauthorization Act of 2004. 47 U.S.C. § 338.

<sup>4</sup> In addition, EchoStar already uses a triple-feed antenna that operates with DBS satellites at 110° W.L. and 119° W.L. and an FSS satellite at either 105° W.L. or 121° W.L. DIRECTV currently offers a consumer triple-feed antenna that receives programming from DIRECTV’s DBS satellites at the 101°, 110°, and 119° W.L. orbital locations. Consumers must use this triple-feed antenna to get high bandwidth programming like DIRECTV’s high-definition programming. See [http://www.directv.com/DTVAPP/imagine/Imagine\\_Standard\\_Receiver.dsp](http://www.directv.com/DTVAPP/imagine/Imagine_Standard_Receiver.dsp).

<sup>5</sup> See File Nos. SAT-LOA-20030606-00107 and SAT-LOA-20030605-00109. EchoStar did not withdraw its tweener satellite application for the 86.5° W.L. orbital location because there are no U.S. DBS satellites within 4.5° of this orbital location.

EchoStar has not previously taken a position as to whether a rulemaking is appropriate and has expressed the view that the Commission's existing rules can accommodate the operation of tweeners subject to resolution of the technical issues. Based on its recent experience with developing new DBS triple-feed antennas, however, EchoStar now believes that a rulemaking proceeding is the appropriate forum for evaluating the technical and interference issues associated with twener satellites located near U.S. DBS orbital locations. Such a rulemaking proceeding would be a better forum to develop a comprehensive technical record in order to ensure that the operation of twener satellites will not limit the ability of existing DBS operators to provide high-quality service to U.S. consumers using triple-feed antennas from U.S. DBS orbital locations.<sup>6</sup>

For the foregoing reasons, EchoStar respectfully requests that the Commission dismiss the Spectrum Five Petition to provide BSS into the U.S. from the 114.5° W.L. orbital location without prejudice or defer action on the Petition until the Commission concludes in rulemaking proceeding that the interference that may be caused by twener satellites into U.S. orbital locations has been adequately addressed.

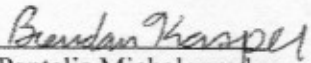
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<sup>6</sup> See *In re Applications of Stockholders of Renaissance Communications Corp. and Tribune Co. For a Transfer of Control of Renaissance Communications Corp.*, 12 FCC Rcd 11866, ¶ 50 (1997) ("As the Supreme Court has stated, 'rulemaking is generally a better, fairer, and more effective method of implementing a new industrywide policy than is the uneven application of conditions in isolated [adjudicatory] proceedings.' Similarly, initiating a rulemaking or other open proceeding would be a 'better, fairer, more effective method' of implementing a modified newspaper cross-ownership rule or waiver policies than the would the 'uneven' granting of individual waivers, such as the permanent one requested by Tribune.")

Respectfully submitted,

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May 16, 2005

**DECLARATION OF DAVID BAIR**

I, David Bair, hereby declare under penalty of perjury under the laws of the United States that  
the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on May 16, 2005.

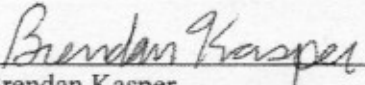


David Bair  
Senior Vice President  
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EchoStar Satellite L.L.C.

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 16<sup>th</sup> day of May, 2005, a copy of the foregoing Opposition of DIRECTV Enterprises, LLC was served by email upon:

Richard E. Wiley  
Todd M. Stansbury  
Wiley Rein & Fielding LLP  
1776 K Street, N.W.  
Washington, DC 20006

  
Brendan Kasper