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November 28, 2006

**BY HAND DELIVERY**

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

FILED/ACCEPTED

NOV 28 2006

Federal Communications Commission  
Office of the Secretary

Re: ***Ex Parte Presentation***  
*SAT-LOI-20050312-00062/63*  
*SAT-PDR-20020425-00071*

Dear Ms. Dortch:

Enclosed you will find an ex parte letter filed in connection with the pending rulemaking proceeding with respect to short-spaced "tweener" DBS satellites. The points made in that filing are also directly relevant to the applications referenced above. Accordingly, we request that you associate these materials with the record on each of those applications.

Thank you for your cooperation in this matter. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

William M. Wiltshire  
Counsel for DIRECTV, Inc.

Enclosure

cc: Todd M. Stansbury (counsel for Spectrum Five)  
Peter A. Rohrbach (counsel for SES Americom)  
Robert Nelson



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Federal Communications Commission  
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Re: *Ex Parte Presentation, IB Docket No. 06-160*

Dear Ms. Dortch:

On November 27, 2006, Stacy Fuller of DIRECTV, Inc. ("DIRECTV") spoke by telephone with Angela Giancarlo, Legal Advisor to Commissioner McDowell; Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein; and Sam Feder, the Commission's General Counsel; and undersigned counsel spoke to Bruce Gottlieb, Legal Advisor to Commissioner Copps, to discuss statements made in the *Tweener NPRM* regarding the potential for processing pending "tweener" applications.<sup>1</sup>

The tweener proponents seek market access to provide DBS service into the United States from orbital locations spaced only half the distance that currently separates DBS systems serving the United States. In the *Tweener NPRM*, the Commission indicated that it may process such applications "provided that they are complete and consistent with the public interest, convenience, and necessity."<sup>2</sup> In this regard, the Commission cited two rules that must be satisfied for a tweener application to be deemed complete, which are designed to demonstrate whether the proposed system will affect operating DBS systems as determined by ITU coordination triggers, and if so, to what extent.<sup>3</sup> Moreover, the Commission made clear that, where a tweener proposal exceeds the ITU triggers and the operator has not completed coordination with affected U.S. DBS systems, the Commission could "proceed with public notice and review, *although it*

<sup>1</sup> *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, 21 FCC Rcd. 9443 (2006) ("*Tweener NPRM*")

<sup>2</sup> *Id.* ¶ 21.

<sup>3</sup> *See id.* ¶ 29 (citing 47 C.F.R. §§ 25.114(d)(13)(ii), and 25.148(f)).

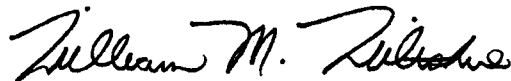
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Marlene H. Dortch  
November 28, 2006  
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*could not take action on the application until agreements are reached.*<sup>4</sup> This is consistent with the Commission's recent treatment of a U.S. DBS operator's application, part of which was deferred because completion of coordination with another U.S. DBS operator had not yet been completed.<sup>5</sup>

The pending tweener proposals exceed ITU coordination triggers and neither operator has yet completed coordination with either of the U.S. DBS operators.<sup>6</sup> Accordingly, neither tweener proponent has submitted an application that can be deemed complete under the Commission's rules. Any action on those applications in the absence of coordination agreements would be directly contrary to the Commission's own statement of the applicable rules in the *Tweener NPRM*.<sup>7</sup>

Sincerely yours,



William M. Wiltshire  
Counsel for DIRECTV, Inc.

cc: Angela Giancarlo  
Bruce Gottlieb  
Barry Ohlson  
Sam Feder  
Emily Willeford  
Fred Campbell  
Aaron Goldberger  
John Giusti  
Robert Nelson

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<sup>4</sup> *Id.* ¶ 41 (emphasis added).

<sup>5</sup> See Condition 2 of Partial Grant, File No. SAT-AMD-20060120-00007 (rel. Mar. 27, 2006) (deferring authorization to operate the EchoStar 10 satellite on three DBS channels where coordination with DIRECTV remained outstanding).

<sup>6</sup> Indeed, Spectrum Five has *never* contacted DIRECTV to initiate coordination discussions in the 20 months since filing its application.

<sup>7</sup> In these circumstances, any action by the International Bureau to grant either of these market access petitions would conflict with the Commission's construction of the applicable rules, and therefore would be well beyond the scope of delegated authority. See, e.g., 47 C.F.R. § 0.261(b) (authority delegated to Chief, International Bureau, does not include acting on any application that presents new or novel arguments not previously considered by the Commission or cannot be resolved under outstanding precedents and guidelines).