

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

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<i>Application of</i>	)	
	)	
<b>SPECTRUM FIVE LLC</b>	)	File No. SAT-LOI-20081119-00217
	)	
Petition for Declaratory Ruling to Serve	)	
The U.S. Market from the 103.15° W.L.	)	
Orbital Location in the 17/24 GHz BSS	)	
Band	)	
	)	

**CONSOLIDATED REPLY AND RESPONSE**

DIRECTV Enterprises, LLC (“DIRECTV”) hereby replies to the Opposition to its Petition to Deny the above referenced application filed by Spectrum Five LLC (“Spectrum Five”) and responds briefly to the Comments of Ciel Satellite Limited Partnership (“Ciel”) regarding DIRECTV’s Petition to Deny.<sup>1</sup> DIRECTV asked the Commission to deny Spectrum Five’s request for authority to serve the U.S. market from a 17/24 GHz BSS space station operating at the nominal 103° W.L. orbital location because that application is patently inconsistent with a license already issued to DIRECTV. The Commission has clearly stated that, in such a situation, it “will deny applications that conflict with previously granted applications.”<sup>2</sup>

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<sup>1</sup> Spectrum Five LLC, Opposition to Petition to Deny (filed Nov. 9, 2009) (“Spectrum Five Opposition”); Comments of Ciel Satellite Limited Partnership (filed Nov. 9, 2009) (“Ciel Comments”).

<sup>2</sup> *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, ¶ 113 (2003) (“FCFS Order”).

Spectrum Five argues that the Commission’s policy contains an unspoken exception for “granted” applications subject to petitions for reconsideration or applications for review. Unfortunately for Spectrum Five, the Commission’s “first come, first served” processing rules require denial of applications that would conflict with “granted” licenses, and licenses pending reconsideration are granted – whether reconsideration takes weeks (as Spectrum Five suggests) or years. Ciel, for its part, argues that even if the Commission has granted a domestic license to serve the United States, such license is entirely subordinate to a non-U.S. network with International Telecommunication Union (“ITU”) date priority. This argument is simply wrong – but more importantly in this proceeding, it is entirely inapposite because Spectrum Five’s licensing administration does not have a network filing with ITU date priority over the United States at the relevant slot.

**I. The Commission’s First Come, First Served Policies Preclude Spectrum Five’s Application from Being Kept on File.**

The Commission licensed DIRECTV to operate a 17/24 GHz BSS space station at the same nominal 103° W.L. orbital location using the same frequencies to serve the same coverage area as currently proposed by Spectrum Five.<sup>3</sup> The system licensed to DIRECTV and that proposed by Spectrum Five plainly cannot both operate from this slot. In its Petition to Deny, DIRECTV pointed out that the Commission specifically considered and resolved the question of how to deal with later-filed applications remaining in the queue that are inconsistent with a license that has been granted.

We decide not to keep subsequently filed applications on file. In other words, *if an application reaches the front of the queue that conflicts with*

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<sup>3</sup> See *DIRECTV Enterprises, LLC*, 24 FCC Rcd. 9393 (Int’l Bur. 2009) (“*DIRECTV Authorization Order*”).

*a previously granted license, we will deny the application* rather than keeping the application on file in case the lead applicant does not construct its satellite system. . . . *In summary, we will deny applications that conflict with previously granted applications* because it is more likely to result in faster service to the public, and it will not disadvantage any party that may wish to apply for that orbit location if it becomes available.<sup>4</sup>

Thus, once a license is granted, conflicting applications remaining in the queue are to be denied.

Spectrum Five suggests that, when the Commission stated that it would “deny applications that conflict with previously granted applications,” it somehow meant to exclude granted applications subject to petitions for reconsideration or applications for review.<sup>5</sup> The Commission’s plain and unequivocal language suggests otherwise.<sup>6</sup> The Commission’s policy applies explicitly to “granted” applications, not applications “granted and no longer subject to administrative appeal.”

DIRECTV’s application was indisputably “granted.”<sup>7</sup> DIRECTV has posted the required performance bond.<sup>8</sup> It could launch a satellite today to provide service pursuant to that license. There is simply no open legal question on this point.

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<sup>4</sup> *FCFS Order*, ¶ 113 (emphasis added). The first come, first served policies explicitly apply to requests for market access by non-U.S. licensed satellites. *See id.*, ¶ 294.

<sup>5</sup> Spectrum Five Opposition at 5, 6-7 n.19

<sup>6</sup> Spectrum Five argues that DIRECTV fails to consider the “context” of the rule. *Id.* DIRECTV does not understand this argument. The Commission had been considering a proposal to keep applications on file until licensed satellites went into operation. Based on unanimous concerns about speculative applications and the discouragement of applications by parties with innovative methods for using or sharing spectrum, the Commission chose “not to keep subsequently filed applications on file.” *FCFS Order*, ¶ 113. These concerns apply equally to Spectrum Five’s proposal to keep subsequently filed applications on file while petitions for reconsideration are pending.

<sup>7</sup> *See DIRECTV Authorization Order*, ¶¶ 33-34 (“Upon review of DIRECTV Enterprises, LLC’s application as amended . . . [we] find that, pursuant to Section 309 of the Communications Act of 1934 as amended, 47 U.S.C. §309, grant of the application, as amended, will serve the public interest, convenience, and necessity” and, “[a]ccordingly, IT IS ORDERED, that DIRECTV Enterprises, LLC is authorized to construct, launch and operate the DIRECTV RB-2 space station at

Nor does Spectrum Five provide a convincing rationale for revisiting this question. Spectrum Five argues that the Commission's concerns about speculative applications do not apply for (as Spectrum Five characterizes it) the "minimal periods that it takes to resolve petitions for reconsideration."<sup>9</sup> Spectrum Five goes so far as to suggest that administrative appeals are resolved in "weeks or a few months."<sup>10</sup> The record with such issues does not support this suggestion, especially where a petition for reconsideration is followed by an application for review.<sup>11</sup> Spectrum Five's petition for reconsideration of the *DIRECTV Authorization Order* has been pending for nearly four months, and there have been instances where such petitions have not been resolved for as long as – or longer than – it takes to build a satellite. Allowing an application to remain pending for such indefinite periods merely due to the pendency of an administrative appeal would give the applicant an unfair advantage over other potentially interested parties.<sup>12</sup>

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the 102.825° W.L. orbital location using the 17.3-17.7 GHz (space-to-Earth) and the 24.75-25.15 GHz (Earth-to-space) frequency bands.”).

<sup>8</sup> See Public Notice, DA 09-2036 (rel. Sep. 11, 2009).

<sup>9</sup> Spectrum Five Opposition at 6.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., *Spectrum Five, LLC*, 21 FCC Rcd. 14023 (Int'l Bur. 2006), *rev. denied*, 23 FCC Rcd. 3252 (2008) (14 months); *TelQuest Ventures, LLC*, 11 FCC Rcd. 8151 (Int'l Bur. 1996), *recon. denied*, 11 FCC Rcd. 13943 (Int'l Bur. 1996), *rev. denied*, 16 FCC Rcd. 15026 (2001) (5 years); *EchoStar Satellite LLC*, 19 FCC Rcd. 7846 (Int'l Bur. 2004), *recon. denied*, 21 FCC Rcd. 4060 (Int'l Bur. 2006) (2 years).

<sup>12</sup> The Commission has made clear that it will accept new applications for a particular location only “at the time [it] adopt[s] an Order revoking a license . . . or upon release of a public notice announcing that a licensee has surrendered its license.” *FCFS Order*, ¶ 113. As DIRECTV pointed out, Spectrum Five's proposed change in policy would encourage the filing of groundless administrative appeals by applicants hoping to retain their place in the queue. Spectrum Five argues that applicants would not bother to seek such advantage “for some weeks or a few months.” Spectrum Five Opposition at 9. That argument is belied by the time necessary in many cases to resolve administrative appeals of licensing orders.

The Commission has repeatedly made clear that applications conflicting with granted licenses will be denied when they reach the front of the processing queue. Spectrum Five's suggestion that the Commission meant something else, or should change this policy, is baseless.

## **II. Ciel's Arguments About ITU Date Priority are Totally Inapposite.**

Ciel, for its part, argues that the first come, first served rules do not really mean what they say. It argues that, while the Commission will not consider a *U.S. application* that conflicts with a granted license, it will (indeed, must) grant market access to subsequent foreign-licensed satellites with ITU date priority.<sup>13</sup> Thus, argues Ciel, DIRECTV will have to "modify or terminate its operations as necessary, regardless of the impact on any DIRECTV customers," once the Commission grants such market access.<sup>14</sup>

Needless to say, DIRECTV strongly disagrees with Ciel's assertion that the Commission's domestic licensing authority is completely subordinate to ITU date priority.<sup>15</sup> More importantly in this proceeding, however, Ciel's assertion is completely irrelevant – because the Netherlands (which has licensed Spectrum Five) does not have ITU date priority over the United States in this band at the 103° W.L. orbital location. Accordingly, the Commission should simply ignore Ciel's self-serving but totally inapposite filing.

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<sup>13</sup> Ciel Comments at 3.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *See* Reply Comments of DIRECTV Enterprises, LLC, IBFS File No. SAT-LOA-20090807-00085 (filed Nov. 12, 2009) (refuting similar argument raised by Ciel).

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The Commission's first-come, first-served rules clearly provide that, once a license is issued, a later-filed application that rises to the top of the processing queue will be denied. This is a straightforward rule based on well-reasoned administrative principles, and there is no reason to depart from that rule in this proceeding even if the Bureau had the authority to override a clear Commission directive. Accordingly, DIRECTV requests that the Bureau implement the Commission's policy by denying Spectrum Five's application.

Respectfully submitted,  
**DIRECTV ENTERPRISES, LLC**

By:       /s/      

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