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

Application of	)	
	)	
SPECTRUM FIVE LLC	)	File Nos. SAT-LOI-20081119-00217
	)	SAT-AMD-20120314-00044
Petition for Declaratory Ruling to Serve	)	
The U.S. Market from the 103.15° W.L.	)	Call Sign: S2778
Orbital Location in the17/24 GHz	)	
Broadcasting Satellite Service	)	

OPPOSITION TO APPLICATION FOR REVIEW

DIRECTV Enterprises, LLC ("DIRECTV") hereby requests that the Commission dismiss or deny the application for review filed by Spectrum Five LLC ("Spectrum Five") in the above referenced proceeding.[1] Spectrum Five purportedly seeks review of an order by the International Bureau denying its 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.[2] Yet its Application utterly fails to discuss the Bureau's decision at all, much less specify with particularity the factors that might warrant Commission consideration of that issue. Accordingly, Spectrum Five has failed to satisfy the pleading requirements set forth in Section 1.115(b) of the Commission's rules, and its Application should be

1 *See* Application for Review, IBFS File Nos. SAT-LOI-20081119-00217, SAT-AMD-20120314-00044 (filed July 2, 2012) ("Application").

2 *See DIRECTV Enterprises, LLC and Spectrum Five LLC*, DA 12-861 (Int'l Bur., rel. May 31, 2012) ("*Bureau Order*").

dismissed without further consideration. Moreover, even if it were to be considered on its merits, the Application should be denied.

A. Spectrum Five's Request is Procedurally Defective Because Spectrum Five Fails to Discuss the Bureau's Decision to Deny its Application

As explained in the *Bureau Order*, under the Commission's first-come, first-served licensing framework, applications for new satellites and market access requests for non-U.S.-licensed satellites are placed in a processing queue and then considered in the order in which they were filed.[3] Pursuant to that process, DIRECTV's first-in-line application for a 17/24 GHz BSS satellite at the nominal 103º W.L. orbital location was granted in July 2009.[4] Spectrum Five's later-filed application for a satellite operating in the same band from the same frequencies is patently inconsistent with DIRECTV's authorized operations, and would cause harmful interference to DIRECTV is allowed to operate.

The Commission has 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 previously 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 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. We agree with Teledesic that keeping applications on file would encourage speculative or "place holder" applications. . . . ***In summary, we will deny applications that conflict with previously granted applications*** because it is more likely to result in faster service to the

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3 *Id.*, ¶ 11.

4 *DIRECTV Enterprises, LLC*, 24 FCC Rcd. 9393 (Int'l Bur. 2009).

> public, and it will not disadvantage any party that may wish to apply for that orbit location if it becomes available.[5]

Straightforward application of this clearly stated and unequivocal Commission policy led the Bureau to deny Spectrum Five's market access request.[6]

In an attempt to evade this policy, Spectrum Five had argued that its market access request should not be denied until its challenge to the grant of DIRECTV's first-in-line application at the same orbital location had been finally resolved. Citing previous precedent in which a second-in-line application was denied during the pendency of such review, the Bureau rejected that argument: "To the extent that Spectrum Five argues that we should refrain from acting on its request until all potential challenges to the grant of the [DIRECTV authorization] are exhausted, we do not agree."[7] Accordingly, the Bureau denied Spectrum Five's second-in-line market access request.

The document in which Spectrum Five purportedly seeks review of this decision is devoid of any discussion the decision itself. Rather, Spectrum Five's filing focuses exclusively on *another* decision—the Bureau's decision to grant the 17/24 GHz BSS license at 103º W.L. to DIRECTV. In fact, if not for perfunctory requests at the beginning and end of the filing that the Commission "reinstate Spectrum Five's application,"[8] a reader would not even know that the Bureau had denied Spectrum Five's second-in-line application.

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5 *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, ¶ 113 (2003) ("*FCFS Order*") (emphasis added).

6 *Bureau Order*, ¶ 12.

7 *Id.* (citing *EchoStar Satellite LLC*, 20 FCC Rcd. 12027, ¶ 1 n.3 (Int'l Bur. 2005)).

8 *See* Application at 2, 15.

Section 1.115(b) of the Commission's rules sets forth the pleading requirements for an application for review of action taken pursuant to delegated authority. Such an application must "concisely and plainly state the question presented for review with reference, where appropriate, to the findings of fact or conclusions of law."[9] In addition, "the application for review shall specify with particularity" from among a list "the factor(s) which warrant Commission consideration of the questions presented."[10] Spectrum Five's Application satisfies neither of these requirements.

The Commission has made clear that such an application for review is procedurally defective and subject to dismissal. For example, in *Chapman S. Root Revocable Trust*, the Commission dismissed an application for review filed by the NAACP to challenge a staff-level order granting authority to transfer certain broadcast licenses.[11] After reciting the pleading requirements of Section 1.115(b), the Commission found that "NAACP fails to identify any of the foregoing factors [listed in Section 1.115(b)(2)] as the basis for its Application for Review. Moreover, the Application for Review does not even implicitly rely upon any of the factors as justification for seeking Commission relief."[12] NAACP attempted to justify its failure by arguing that its challenge to the assignment of broadcast licenses should succeed based on its pending challenge to the renewals that preceded them. The Commission rejected NAACP's

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[9] 47 C.F.R. § 1.115(b)(1).

[10] *Id.* at § 1.115(b)(2).

[11] *Chapman S. Root Revocable Trust*, 8 FCC Rcd. 4223 (1993).

[12] *Id.*, ¶ 7.

reliance upon the pendency of its collateral appeal as "unavailing."[13] The parallel to Spectrum Five's position could hardly be more evident. Accordingly, Spectrum Five's Application should also be found defective and dismissed without further consideration.[14]

B. Spectrum Five's Request Is Substantively Without Merit

Even if the Commission were to reach the merits, Spectrum Five's Application should be denied. As demonstrated above, it has failed to raise any basis for overturning the Bureau's straightforward application of binding Commission policy. Moreover, as a policy matter, granting the Application would also be unwise. If the simple filing of a request for review of a licensing decision were sufficient to override the Commission's directive that later-filed satellite applications are to be dismissed if they conflict with already-granted authorizations, such requests would become a matter of course in order to gain a regulatory advantage over other parties interested in a particular slot. This would not only undermine the processing efficiency that the Commission's dismissal policy was designed to achieve, but also add to the burden on Commission resources by forcing it to repeatedly address issues that have previously been resolved. Thus, even on the merits, Spectrum Five's argument should be rejected.

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13 *Id.*, ¶ 8.

14 Nor can Spectrum Five cure this defect on reply. Section 1.115(d) specifies that an application for review and any supplement thereto must be filed within 30 days of public notice of the challenged action, and that period has long since passed.

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For the reasons set forth herein, DIRECTV opposes Spectrum Five's Application and requests that the Commission dismiss or deny it as expeditiously as possible.

Respectfully submitted,

DIRECTV ENTERPRISES, LLC

By: ___/s/_________________________

William M. Wiltshire
Michael Nilsson

WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036
202-730-1300

Counsel for DIRECTV Enterprises, LLC

Susan Eid
Executive Vice President,
Government Affairs
Stacy R. Fuller
Vice President, Regulatory Affairs
DIRECTV, LLC
901 F Street, NW, Suite 600
Washington, DC 20004
(202) 383-6300

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CERTIFICATE OF SERVICE

I hereby certify that, on this 17th day of July, 2012, a copy of the foregoing Opposition to Application for Review was served by hand delivery upon:

David Wilson
President
Spectrum Five LLC
1776 K Street, N.W.
Suite 200
Washington, DC 20006

/s/
Laura Merkey