

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

In the Matter of)
)
Spectrum Five LLC) File No. _____
)
Petition for Declaratory Ruling to Serve the)
U.S. Market from the 110.9° W.L. Orbital)
Location in the 17/24 Broadcasting Satellite)
Service Band)

PETITION FOR DECLARATORY RULING AND WAIVER

I. INTRODUCTION AND SUMMARY

Pursuant to Sections 1.2 and 25.137 of the Commission’s rules,¹ Spectrum Five LLC (“Spectrum Five”) hereby requests a declaratory ruling that its provision of service to the U.S. market through a Netherlands-authorized satellite from the 110.9° W.L. orbital location using the 17/24 GHz Broadcast-Satellite Service (“BSS”) band is in the public interest. This petition for declaratory ruling (“Petition”) complies with the Commission’s procedural and substantive requirements for market entry by a foreign-authorized satellite. Grant of this Petition is in the public interest because Spectrum Five’s provision of BSS from the 110.9° W.L. orbital location will benefit consumers by providing the next generation of DBS services, including video and audio broadcasting, local-into-local TV, Broadband, and fixed and mobile networks. Additionally, service by Spectrum Five, a U.S.-based company, will increase competition in overall DBS services, which will lower costs and stimulate service innovation to the benefit of consumers.

¹ 47 C.F.R. §§ 1.2, 25.137.

The 110.9° W.L. orbital location is offset from the nominal 111.0° W.L. orbital location designated by the Commission for use by satellite operators in the 17/24 GHz BSS band.² Spectrum Five was previously authorized to operate at the 110.9° W.L. orbital location, but that authorization expired when Spectrum Five did not post a bond under the then-existing bond rules, which were soon to be replaced with new rules that had not yet been adopted or published by the Commission.³ The Commission adopted and released those rules on December 17, 2015, although they have not yet taken effect. If those rules have not become effective by the time the Commission acts on this Petition, Spectrum Five requests that the Commission waive, for good cause shown, the currently effective rules and grant Spectrum Five's petition under the rules adopted on December 17, 2015.

This application responds to the Commission's recent announcement that the 17/24 GHz BSS band frequencies at 110.9° W.L. are currently available for assignment.⁴ Pursuant to Section 25.137(b) of the Commission's rules,⁵ this Petition is being filed electronically via the International Bureau Filing System as an attachment to FCC Form 312 and Schedule S.

² *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, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842 at Appendix F (2007) ("BSS Report and Order").

³ See Letter from Scott H. Angstreich, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOI-20150416-00025 et al. (Feb. 19, 2016) (explaining history).

⁴ See *Policy Branch Information; Actions Taken*, Public Notice, Report No. SAT-01141, DA 16-245, File No. SAT-LOI-20150416-00025 (Mar. 4, 2016).

⁵ 47 C.F.R. § 25.137(b).

II. DESCRIPTION OF SPECTRUM FIVE'S PROPOSED SYSTEM

A full description of the technical system proposed by Spectrum Five is included in the Technical Narrative.

III. LEGAL, FINANCIAL, AND TECHNICAL QUALIFICATIONS

A. Legal Qualifications

Spectrum Five is legally qualified to provide the service requested in this application. The information provided in the attached Form 312 and ownership exhibit responding to Question 40 of Form 312 demonstrates Spectrum Five's compliance with the Commission's basic legal qualifications. In addition, Spectrum Five has previously been authorized to provide DBS service to U.S. customers using Netherlands-authorized satellites.⁶

B. Financial Qualifications

Spectrum Five will meet the milestone schedule set forth in Section 25.164 of the Commission's rules (*i.e.*, contract in one year, complete critical design review in two years, begin construction in three years, and launch and operate in five years)⁷ and the bond posting requirement set forth in Section 25.165 of the Commission's rules.⁸

As noted above, the Commission has recently adopted new milestone and bond posting requirements that have yet to take effect for administrative reasons. If those new rules have not taken effect as of the time the Commission acts on this Petition, Spectrum Five requests that the Commission waive the old milestone and bond posting requirements and apply the new milestone

⁶ *Spectrum Five LLC, Petition for Declaratory Ruling Regarding 17/24 GHz Broadcasting-Satellite Service to the U.S. Market from the 119.25° W.L. Orbital Location*, Declaratory Ruling, 27 FCC Rcd 13129 (2012) ("119.25° W.L. Authorization").

⁷ 47 C.F.R. § 25.164.

⁸ 47 C.F.R. § 25.165.

and bond posting requirements to Spectrum Five.⁹ The Commission may waive its rules “for good cause shown.” 47 C.F.R. § 1.3. Good cause exists where the deviation from the rules “better serves the public interest.” *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). Good cause exists here because Spectrum Five is seeking to have the new milestone and bond posting requirements applied to it, and the Commission has already determined that these new requirements better serve the public interest than the old requirements.¹⁰

C. Technical Qualifications

In the attached Form 312, Schedule S, and Technical Narrative, Spectrum Five demonstrates that it is technically qualified to hold the authorization requested herein. Specifically, Spectrum Five provides the information currently required by Section 25.114 of the Commission’s rules, including demonstration of compliance with the orbital debris mitigation rules. In addition, Spectrum Five’s Technical Narrative demonstrates compliance with the FCC’s technical rules specific to the 17/24 GHz frequency band.

IV. TYPE OF OPERATIONS

Spectrum Five intends to use its proposed satellite on a non-broadcast, non-common carrier basis.

V. GEOGRAPHIC SERVICE REQUIREMENTS

Spectrum Five will provide service to Alaska and Hawaii in compliance with Section 25.225 of the Commission’s rules, 47 C.F.R. § 25.225.

⁹ See Second Report and Order, *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, FCC 15-167 (2015) (“Satellite Licensing Order”).

¹⁰ See Satellite Licensing Order ¶¶ 59, 74 (explaining benefits of the new rules including reduced administrative burdens, removal of regulatory uncertainty, and new incentives for an operator to turn in licenses it will not use).

VI. NETHERLANDS AUTHORIZATION

The Kingdom of the Netherlands has granted Spectrum Five the right to use the 110.9° W.L. orbital location and associated frequencies in the 17/24 GHz BSS band through an agreement.¹¹ The foreign license requirement of Section 25.137 of the Commission's Rules is therefore satisfied.¹²

Under the Agreement, the Kingdom of the Netherlands will act as the sponsoring administration for notification, coordination, examination, and registration of Spectrum Five's networks to the ITU. The Netherlands Radio Communications Agency will be responsible for making the ITU filings necessary to advance publish, coordinate and notify the frequencies to be used by the Spectrum Five network. The Agreement authorizes Spectrum Five to make exclusive use of the 110.9° W.L. orbital location with respect to the frequencies and services specified in the ITU filings. The duration of the authorization is for the lifetime of Spectrum Five's first operational satellite, and the lifetime of any additional or replacement satellites placed at this location and launched within five years from the launch of the first operational satellite. The Agreement also provides that Spectrum Five may apply for renewal of the exclusive use rights, and that such renewal will not be unreasonably withheld. The Kingdom of the Netherlands has agreed to provide all necessary licenses for Spectrum Five's TT&C operations.

¹¹ Agreement between the State of the Netherlands, the Government of the Netherlands Antilles, Spectrum Five LLC and Spectrum Five BV (effective August 7, 2007) ("Agreement").

¹² See *Amendment of the Commission's Regulatory Policies to Allow Non-U.S Licensed Space Stations to Provide Domestic and International Satellite Service in the United States and Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, Report and Order, 12 FCC Rcd 24094, 24177-78 (¶ 196) (1997) ("DISCO II Order").

VII. GRANT OF THIS PETITION IS IN THE PUBLIC INTEREST

In the *DISCO II Order*, the Commission stated that providing opportunities for foreign-licensed satellites to deliver services in the U.S. could benefit U.S. consumers.¹³ Grant of Spectrum Five's Petition will serve the public interest in a variety of ways.

A. Grant of the Petition Will Strengthen Competition in the Provision of DTH Services to the Public.

Spectrum Five plans to use the 110.9° W.L. orbital location for the provision of direct-to-home ("DTH") services. Grant of this application will thus serve the public interest by ensuring greater competition in the delivery of DTH services to the public. In 2006, the Commission authorized Spectrum Five to provide direct broadcast satellite services to the U.S. from the 114.5° W.L. orbital location.¹⁴ The Commission found that grant of that petition would "offer an opportunity for increased competition in the U.S. DBS market" and that "[i]ncreased competition could provide consumers more satellite programming choices, more alternatives in subscription video providers and services at reduced prices for those services, and further technological innovation."¹⁵ The Commission also has previously granted Spectrum Five authorization to operate at the 110.9° W.L. orbital location.¹⁶ Grant of the instant Petition will provide Spectrum Five with the ability to provide increased competition in the DTH marketplace.

¹³ *DISCO II Order*, 12 FCC Rcd at 24097 (¶ 4).

¹⁴ *Spectrum Five LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Spectrum from the 114.5° W.L. Orbital Location, Order and Authorization*, 21 FCC Rcd 14023 (2006) ("Spectrum Five 2006 Authorization").

¹⁵ *Id.* at ¶ 1.

¹⁶ *See* Stamp Grant, Spectrum Five LLC Petition for Declaratory Ruling to Provide Service from 110.9 W.L., IBFS File No. SAT-LOI-20150416-00025 (Oct. 29, 2015).

In addition, the Commission’s Order adopting service rules for 17/24 GHz BSS satellites explicitly explained that the purpose of these rules was “to facilitate the introduction of new and innovative services to consumers in the United States and promote increased competition among satellite and terrestrial services.”¹⁷ Similarly, when the Commission injected more flexibility into the orbital spacing regime in the BSS Order on Reconsideration, the Commission intended an allocation system that would produce the infrastructure needed to provide consumers with “the most competitive service options.”¹⁸ The Commission’s intended benefits of increased competition are clear: “reduced prices” for the services at issue and “further technological innovation.”¹⁹ Granting Spectrum Five’s Petition will enable the Commission to achieve these objectives.

¹⁷ *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, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842, 8844 (¶ 1) (2007) (“Report and Order”).

¹⁸ *See 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, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Order on Reconsideration, 22 FCC Rcd 17951 at ¶ 17 (2007) (“Order on Reconsideration”).

¹⁹ *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, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Notice of Proposed Rulemaking, 21 FCC Rcd 7426 at ¶ 1 (2006) (“BSS NPRM”).

B. The ECO-Sat Test is Satisfied.

The FCC previously has found that Spectrum Five’s use of a Netherlands-authorized satellite to provide DTH services to the U.S. satisfies the ECO-Sat test.²⁰ Grant of this Petition also satisfies the Commission’s ECO-Sat test, under which the agency examines opportunities for U.S.-licensed satellites to serve the home market of the non-U.S. satellite seeking access to the United States. In particular, the Commission examines whether there are any *de jure* or *de facto* barriers to entry for the provision of analogous services in the non-U.S. satellite’s home market.²¹ The relevant foreign markets are (1) the market of the authority licensing the satellite and (2) the markets in which communications with the U.S. earth stations will originate or terminate.²² In this case, the relevant markets are the Kingdom of the Netherlands, the authorizing Administration, and Curacao and Saint Maarten. The relevant service is Direct-to-Home (“DTH”).²³ There have been no changes in relevant Netherlands law or policy since the agency’s ECO-Sat finding.

As the FCC concluded, there are no *de jure* or *de facto* barriers to entry for an entity proposing to use a U.S.-licensed satellite to deliver DTH services to the relevant markets. Several foreign satellite operators already provide DTH services in the Netherlands. The only Dutch regulation applicable to the provision of satellite services requires that a license be obtained from the Radiocommunications Agency Netherlands for the use of frequencies for a satellite earth station.²⁴ There are no restrictions regarding the nationality of the applicant for a license, and in practice, licenses are generally issued within eight weeks, for a (renewable)

²⁰ Spectrum Five 2006 Authorization at 14030-31 (¶¶ 10-13).

²¹ *DISCO II Order*, 12 FCC Rcd at 24137 (¶ 99).

²² *Id.* at 24129-133 (¶¶ 76-88).

²³ *Id.* at 24136-137 (¶ 98).

²⁴ No license is required for receive-only terminals.

period of five years. U.S. operators would receive the same treatment as any other operator in this respect.

VIII. WAIVER PURSUANT TO SECTION 304 OF THE ACT

In accordance with Section 304 of the Communications Act of 1934, as amended, 47 U.S.C. § 304, the party to this application hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

IX. CONCLUSION

For the foregoing reasons, Spectrum Five respectfully requests that the Commission promptly approve this Petition as in the public interest, convenience and necessity.

Respectfully submitted,

Spectrum Five LLC

By: /s/ David Wilson
David Wilson
President
SPECTRUM FIVE LLC

Dated March 8, 2016