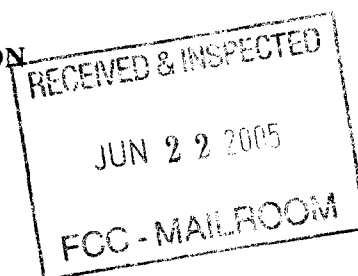


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554



In the Matter of)
)
)
ECHOSTAR SATELLITE L.L.C.)
)
Application for Special Temporary Authority)
to Conduct Telemetry, Tracking, and Command)
Operations during the Relocation of EchoStar 4)
to the 77° W.L. Orbital Location;)
)
Application for Modification of)
Direct Broadcast Satellite Authorization)
To Permit Long-Term Cessation of Operations)
On Three DBS Channels at the 157° W.L.)
Orbital Location; and)
)
Application for Modification of Earth Station)
Authorization to add the EchoStar 4 Satellite at)
77° W.L. as a Point of Communication.)
_____)

File No. SAT-STA-20050321-00068
JUN 28 2005

Received
Policy Branch
International Bureau

File No. SAT-MOD-20050513-00103
Call Sign: S2621

File No. SES-MFS-20050527-00662
Call Sign: E020306

To: The International Bureau

REPLY TO DIRECTV COMMENTS ON PETITION FOR RECONSIDERATION

Pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, EchoStar hereby replies to the Comments of DIRECTV Enterprises, LLC ("DIRECTV") on EchoStar's Petition for Reconsideration.¹ DIRECTV should not be heard in its attempt to shut the door for its competitors to obtain substantially the same authorizations that DIRECTV has already received from the Commission. The difference that DIRECTV cites between the instant request and DIRECTV's use of the 82° W.L. orbital slot is that, in DIRECTV's case, the satellite would

¹ DIRECTV Comments on Petition for Reconsideration, File Nos. SAT-STA-20050321-00068, SAT-MOD-20050513-00103, and SES-MFS-20050527-00662 (filed June 20, 2005) ("Comments").

“ensure continuity of service” to Canadian consumers. Here, DIRECTV says, there is no such “concrete proposal” to serve Mexican consumers. Setting aside the question of the Commission’s authority to weigh the Mexican against the Canadian national interest (an issue DIRECTV does not discuss), DIRECTV is wrong on the facts. The EchoStar 4 satellite will in fact be used expeditiously to provide service to Mexican consumers. In fact, the evidence of the Mexican public interest is much stronger here than the proof of the Canadian public interest was in the DIRECTV case. That evidence comes from the Mexican government -- a more authoritative source than DIRECTV’s private assertions about what is good for Canada.

Nor is it correct that EchoStar’s proposal to serve the southern United States is any less concrete than DIRECTV’s proposal to serve the United States from the Canadian 72.5° W.L. slot. Local-into-local service is very important, but the Commission has long recognized that the wonderful variety of multi-channel DBS services, including international ethnic programming, is more broadly in the public interest. Hispanic-language programming is very attractive to huge populations of consumers in several southern states, and there is no basis for discounting the importance of this programming. In any event, the Commission has recognized the value of affording DBS providers flexibility in structuring their offerings.

In short, service to Mexico and service to the U.S. provide two independent bases why the instant STA request should be granted.

DISCUSSION

In its Comments, DIRECTV attempts to distinguish the Bureau’s grant of its earlier applications to move two DBS satellites to Canadian orbital slots from the denials of the above-captioned applications. DIRECTV also urges the Bureau to consider EchoStar’s STA request to move EchoStar 4 to a Mexican orbital location at 77° W.L. in conjunction with EchoStar’s soon-

to-be-filed blanket receive-only earth station application to provide service into the U.S. from that slot. DIRECTV's comments should be rejected for the reasons stated below.

First, the public interest benefits of moving EchoStar 4 to 77° W.L. are not only comparable but far superior to those identified by the Bureau when it granted DIRECTV's applications to move its DBS satellites to two Canadian orbital locations. In those cases, the Bureau found that a move of DIRECTV 3 to 82° W.L. was in the public interest because the satellite provided an immediate improvement in the reliability and quality of existing service to for Direct-to-Home ("DTH") subscribers in Canada.² Here, moving EchoStar 4 to 77° W.L. will result in the introduction of substantial new DTH and other services to Mexican consumers and additional competition in the MVPD market.³ According to the Mexican regulatory authorities, relocating EchoStar 4 will allow the Mexican Government to "improve the availability of and access to the general population to digital services through Mexico, including education centers, libraries, health centers among other as part of the e-Mexico National System."⁴ Further, the relocation of EchoStar 4 "will allow the near-term introduction of a second Mexican DTH service provider, in turn, bringing the valuable benefit of competition to Mexican consumers and

² See *In the Matter of EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations during the Relocation of EchoStar 4 to the 77° W.L. Orbital Location; Application for Modification of Direct Broadcast Satellite Authorization to Permit Long-Term Cessation of Operations on Three DBS Channels at the 157° W.L. Orbital Location; Application for Modification of Earth Station Authorization to add the EchoStar 4 Satellite at 77° W.L. as a Point of Communication*, File Nos. SAT-STA-20050321-00068, SAT-MOD-20050513-00103, and SES-MFS-20050527-00662; Call Signs: S2621 and E020306, DA 05-1581 at ¶ 7 (rel. June 3, 2005) ("Denial Order").

³ To date only DIRECTV's affiliate provides DTH services in Mexico.

⁴ See Letter from Jorge Alvarez Hoth, Subsecretario de Comunicaciones, SCT and Jorge Aredondo Martinez, Presidente, COFETEL to Kevin J. Martin, Chairman, FCC (Jun. 9, 2005) ("Mexico Letter").

benefit also the diversity of telecommunications services.”⁵ These benefits are not hypothetical or predictive,⁶ but are benefits that the Mexican regulatory authorities have noted in support of EchoStar’s applications.⁷

Second, the instant request also would result in similar public interest benefits to U.S. consumers as the recently approved DIRECTV 5 relocation.⁸ The EchoStar 4 satellite will be used to provide additional Spanish language programming to areas with significant Spanish-

⁵ See Mexico Letter at 2.

⁶ In the DIRECTV cases, the record only contained claims from private companies in support of their alleged public interest benefits. See *DIRECTV, Inc.*, Order and Authorization, 19 FCC Rcd 11055, at ¶ 4 (2004) and *In the Matter of DIRECTV Enterprises, LLC, Request for Special Temporary Authority for the DIRECTV 5 Satellite*, Order and Authorization, SAT-STA-20040107-00002, Call Sign S2417, DA 04-2526 at ¶ 8 (released Aug. 13, 2004).

⁷ DIRECTV also argues that the Bureau can distinguish the two cases because here the Mexican authorities have not yet granted the concession necessary for a second operator to provide DTH service to Mexican consumers. See Comments at 4. However, as discussed above, the Mexican Government has filed a letter in support of the above-captioned applications and it is reasonable to assume that the appropriate Mexican authorities will ensure that any necessary concessions will be obtained in a timely manner to ensure that these benefits will be realized for Mexican consumers.

⁸ While the public interest benefit cited in the case of DIRECTV 5 was the expansion of local-into-local service, local-into-local is not a requirement for service to be in the public interest. The Commission has long recognized the value of affording DBS providers flexibility in structuring their offerings. See, e.g., *In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, 11 FCC Rcd 9712, ¶ 17 (1995) (“[W]e will require that each licensee initiate DBS service within five years of licensure, rather than within the term of its first license. Thus, the new policy will be that a DBS licensee must begin DBS operations within five years of receipt of its license, but may otherwise make unrestricted use of the spectrum during that time. After that five year period, such a licensee may continue to provide non-DBS service so long as at least half of its total capacity at a given orbital location is used for DBS service.”) and *In the Matter of Policies and Rules for the Direct Broadcast Satellite Service*, Report and Order, 17 FCC Rcd 11331, ¶ 155 (2002) (“We conclude that we will allow non-conforming satellite use for all orbital locations, including the western orbital locations, for downlink satellite services that meet the technical requirements for interference protection. Therefore, DBS licensees are free to provide non-conforming services on as many transponders on any of their satellites for as large a fraction of the time as they wish subject to the Commission’s other requirements for DBS.”)

speaking populations in the southern portion of the United States.⁹ EchoStar has been a leader in the provision of specialty programming to underserved communities and the EchoStar 4 relocation will allow EchoStar to continue to expand specialty program options to its customers. Further, as EchoStar has pointed out, these benefits can be achieved without the countervailing concerns about competitive opportunities for U.S. satellites in the foreign country that were raised by the DIRECTV 5 relocation application because, unlike Canada, Mexico and the U.S. have adopted protocols relating to the provision of satellite services in each other's country.¹⁰

Third, there is absolutely no basis for delaying consideration of EchoStar's STA request as suggested by DIRECTV. As an initial matter, such a delay would defeat one of the purposes of the request, which is to expedite additional services to U.S. and Mexican consumers. And contrary to DIRECTV's claim, the EchoStar 4 application is distinguishable from the DIRECTV 5 application to provide service solely into the U.S., where the Bureau decided to consider the satellite STA and the blanket earth station application together. Here, the EchoStar 4 STA request has two independent public interest bases for expeditious action - service into Mexico and additional service to portions of the U.S. Each of these public interest rationales on its own is sufficient to justify granting the request. Waiting to act on the above-captioned applications until all the information necessary to provide service into the U.S. has been submitted will only serve to delay the provision of needed satellite services to Mexican as well as U.S. consumers, which clearly is not in the public interest of either country.¹¹

⁹ See EchoStar Supplement to Petition for Reconsideration at 5.

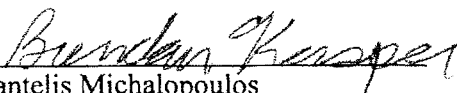
¹⁰ See EchoStar Petition for Reconsideration at 8.

¹¹ EchoStar has submitted the EIRP contours for EchoStar 4 at 77° W.L. for the provision of service to Mexico and portions of the U.S. with its Petition for Reconsideration. The Supplement to the Petition for Reconsideration, inadvertently refers to contours submitted with

For the reasons stated herein, EchoStar respectfully requests that the Bureau immediately reconsider the *June 3 Order* and grant EchoStar's request to move EchoStar 4 to the 77° W.L. orbital location.¹²

Respectfully submitted,

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June 22, 2005

the May 10 letter. See DIRECTV Comments at fn 11. That supplement should have also referred to the updated contours.

¹² The Bureau should also reconsider its associated dismissals of the related EchoStar applications and grant them as well.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June 2005, a copy of the foregoing was served upon the following by electronic mail:

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