

Approved by OMB  
3060-0678

Date & Time Filed: Jun 10 2005 11:51:55:473AM  
File Number: SAT-MOD-20050610-00119  
Call Sign: S2133

FCC APPLICATION FOR SPACE AND EARTH STATION:MOD OR AMD - MAIN FORM	FCC Use Only
FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	

APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:  
DIRECTV Ent. Spaceway 2 Milestone Extension

1-8. Legal Name of Applicant

<b>Name:</b>	DIRECTV Enterprises, LLC	<b>Phone Number:</b>	310-726-4993
<b>DBA Name:</b>		<b>Fax Number:</b>	310-535-5323
<b>Street:</b>	2230 E. Imperial Hwy	<b>E-Mail:</b>	dapattillo@directv.com
<b>City:</b>	El Segundo	<b>State:</b>	CA
<b>Country:</b>	USA	<b>Zipcode:</b>	90245 -
<b>Attention:</b>	David A. Pattillo		



File # SAT-MOD-20050610-  
00119  
Call Sign S2133 Grant Date 9/29/05  
(or other identifier)  
Term Dates see original 05/11/04  
From \_\_\_\_\_ To: authorization  
15 yrs. from  
Approved: [Signature] laduch  
w/conditions Policy Branch Chief

**Attachment**  
**File No. SAT-MOD-20050610-00119**  
**Dated: September 29, 2005**

DIRECTV Enterprises, LLC's (DIRECTV) request, File No. SAT-MOD-20050610-00119 (Call Sign: S2133), for an extension of the launch milestone date for its authorization<sup>1</sup> to construct, launch, and operate its SPACEWAY 2 Ka-band Fixed-Satellite Service (FSS) satellite at 99.2° W.L. orbital location in the 18.365-18.53 GHz, 18.57-18.735 GHz, 19.7-20.2 GHz, 28.36-28.525 GHz, 29.26-29.425 GHz, and 29.5-30.0 GHz frequency bands IS GRANTED. The conditions contained in the prior authorization of the SPACEWAY 2 Ka-band satellite otherwise remain unchanged. Accordingly, we extend the launch milestone date for the SPACEWAY 2 Ka-band satellite at 99.2° W.L. from June 25, 2005 to until December 25, 2005, in accordance with the terms, conditions, and technical specifications set forth in its application, this Attachment and the Federal Communications Commission's Rules.

1. DIRECTV is afforded thirty days from the date of release of this grant and authorization to decline this authorization as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned; and
2. This Grant is used pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the public notice indicating that this action was taken.



File # SAT-MOD-20050610 00119  
Call Sign S2133 Grant Date 9/29/05  
(or other identifier) see authorization  
Term Dates 11/4/04  
From \_\_\_\_\_ To: 15 yrs. from launch  
Approved: [Signature]  
by conditions. Policy Branch Chief

<sup>1</sup> There have been a number of modifications to DIRECTV's Spaceway 2 Ka-band satellite authorization. A review of all of the modification requests and accompanying Commission actions on such requests is necessary to determine the precise terms and conditions of the authorization. See File No. SAT-MOD-20041122-00212 granted on February 10, 2005 (modifying orbital location); SAT-MOD-20040614-00113 (granted on November 4, 2004 modifying previous authorization); Hughes Communications Galaxy Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service and a Ku-band Broadcast Communications Satellite System, *Order and Authorization*, 13 FCC Rcd 1351 (1997); See also Hughes Communications Galaxy Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service and a Ku-band, *Order and Authorization*, 16 FCC Rcd 2470 (2001); and Hughes Communications Galaxy Inc. Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed Satellite Service and a Ku-band, *Order and Authorization*, 16 FCC Rcd 12627 (2001).

9-16. Name of Contact Representative

<b>Name:</b>	William M. Wiltshire	<b>Phone Number:</b>	202-730-1350
<b>Company:</b>	Harris, Wiltshire & Grannis, LLP	<b>Fax Number:</b>	202-730-1301
<b>Street:</b>	1200 18th ST NW 12th Floor	<b>E-Mail:</b>	wwiltshire@harriswiltshire.com
<b>City:</b>	Washington	<b>State:</b>	DC
<b>Country:</b>	USA	<b>Zipcode:</b>	20036-
<b>Attention:</b>		<b>Relationship:</b>	Legal Counsel

CLASSIFICATION OF FILING

17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.

- a1. Earth Station
- a2. Space Station

- (N/A) b1. Application for License of New Station
- (N/A) b2. Application for Registration of New Domestic Receive-Only Station
- (N/A) b3. Amendment to a Pending Application
- (N/A) b4. Modification of License or Registration
- b5. Assignment of License or Registration
- b6. Transfer of Control of License or Registration
- (N/A) b7. Notification of Minor Modification
- (N/A) b8. Application for License of New Receive-Only Station Using Non-U.S. Licensed Satellite
- (N/A) b9. Letter of Intent to Use Non-U.S. Licensed Satellite to Provide Service in the United States
- (N/A) b10. Other (Please specify)



TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- a. Fixed Satellite
- b. Mobile Satellite
- c. Radiodetermination Satellite
- d. Earth Exploration Satellite
- e. Direct to Home Fixed Satellite
- f. Digital Audio Radio Service
- g. Other (please specify)

21. STATUS: Choose the button next to the applicable status. Choose only one.

- Common Carrier       Non-Common Carrier

22. If earth station applicant, check all that apply.

- Using U.S. licensed satellites
- Using Non-U.S. licensed satellites

23. If applicant is providing INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

- Connected to a Public Switched Network       Not connected to a Public Switched Network       N/A

24. FREQUENCY BAND(S): Place an 'X' in the box(es) next to all applicable frequency band(s).

- a. C-Band (4/6 GHz)       b. Ku-Band (12/14 GHz)
- c. Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower: 18300

Frequency Upper: 30000

(Please specify additional frequencies in an attachment)

TYPE OF STATION

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

- a. Fixed Earth Station
- b. Temporary-Fixed Earth Station
- c. 12/14 GHz VSAT Network
- d. Mobile Earth Station
- e. Geostationary Space Station
- f. Non-Geostationary Space Station
- g. Other (please specify)

26. TYPE OF EARTH STATION FACILITY:

- Transmit/Receive     Transmit-Only     Receive-Only     N/A

"For Space Station applications, select N/A."

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an 'X' in the box(es) next to all that apply.)

- a -- authorization to add new emission designator and related service
- b -- authorization to change emission designator and related service
- c -- authorization to increase EIRP and EIRP density
- d -- authorization to replace antenna
- e -- authorization to add antenna
- f -- authorization to relocate fixed station
- g -- authorization to change frequency(ies)
- h -- authorization to add frequency
- i -- authorization to add Points of Communication (satellites & countries)
- j -- authorization to change Points of Communication (satellites & countries)
- k -- authorization for facilities for which environmental assessment and radiation hazard reporting is required
- l -- authorization to change orbit location
- m -- authorization to perform fleet management
- n -- authorization to extend milestones
- o -- Other (Please specify)

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. 1.1308 and 1.1311, as an exhibit to this application. A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.  Yes  No

ALIEN OWNERSHIP Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30-34.

29. Is the applicant a foreign government or the representative of any foreign government?	<input type="radio"/> Yes <input checked="" type="radio"/> No
30. Is the applicant an alien or the representative of an alien?	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
31. Is the applicant a corporation organized under the laws of any foreign government?	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A
32. Is the applicant a corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	<input type="radio"/> Yes <input type="radio"/> No <input checked="" type="radio"/> N/A



33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?  Yes  No  N/A

34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.

#### BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules?  Yes  No  
If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.

36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explanation of circumstances.  Yes  No

37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explanation of circumstances.

Yes  No

38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attempting unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition? If Yes, attach as an exhibit, an explanation of circumstances

Yes  No

39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhibit, an explanation of the circumstances.

Yes  No

40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.

41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.

Yes  No

42a. Does the applicant intend to use a non-U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.

Yes  No

42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?

43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

DIRECTV Enterprises, LLC seeks a six-month extension of its launch and operate milestone for SPACEWAY 2 based on a launch delay beyond its control.

Exhibit A

**CERTIFICATION**

The Applicant 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, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- Individual
- Unincorporated Association
- Partnership
- Corporation
- Governmental Entity
- Other (please specify)

45. Name of Person Signing  
James Butterworth

46. Title of Person Signing  
Senior Vice President

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WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT  
(U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION  
(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

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

\_\_\_\_\_  
*Application of* )  
 )  
 )

**DIRECTV ENTERPRISES, LLC** )

For Extension of Launch and Operation )  
Milestone )  
\_\_\_\_\_ )

File No. SAT-MOD-2005  
Call Sign S2133      0610-0019

**APPLICATION FOR EXTENSION OF  
LAUNCH AND OPERATION MILESTONE**

DIRECTV Enterprises, LLC (“DIRECTV”) holds a license to construct, launch, and operate a Fixed-Satellite Service (“FSS”) system using Ka-band frequencies at the 99.2° W.L. orbital location.<sup>1</sup> It has proceeded diligently with the construction of its Ka-band system, to the point where its SPACEWAY 2 satellite has been completely constructed, tested, and shipped to the launch provider. Unfortunately, however, due to circumstances beyond its control – an electrical systems failure on a non-DIRECTV satellite scheduled to be launched on the same launch vehicle along with SPACEWAY 2 – DIRECTV will not be able to launch and operate this satellite in time to meet the June 25, 2005 milestone in its license.<sup>2</sup>

<sup>1</sup> See FCC File Nos. SAT-MOD-20040614-00113 and SAT-MOD-20041122-00212.

<sup>2</sup> See *Hughes Communications Galaxy, Inc.*, 16 FCC Rcd. 2470 ¶ 20 (Int’l Bur. 2001) (establishing milestone).

Accordingly, pursuant to Section 25.117(c) of the Commission's rules,<sup>3</sup> DIRECTV requests that its milestone be extended for six months – to December 25, 2005 – to allow sufficient time to arrange for launch of the satellite. The public interest will be served by such an extension, given DIRECTV's demonstrated diligence and the extraordinary intervening circumstances beyond DIRECTV's control that will preclude milestone compliance.

### DISCUSSION

DIRECTV and its affiliates have invested years of effort and over \$2 billion in developing and implementing a Ka-band satellite system, known as SPACEWAY. The satellites will be used to enhance DIRECTV's ability to provide local-into-local services to its subscribers, including the retransmission of local signals in high-definition format in many markets. This is a crucial step in DIRECTV's ongoing efforts to remain the most technologically advanced subscription television service available, and to provide American consumers a viable alternative to incumbent cable operators.

Originally, both SPACEWAY satellites were to be launched by Sea Launch Company, LLC ("Sea Launch"). However, when Sea Launch encountered an anomaly in July 2004 that was likely to delay future launches,<sup>4</sup> DIRECTV decided to move one of those launches to Arianespace for an April 2005 launch.<sup>5</sup> Both SPACEWAY satellites were complete well ahead of their launch dates and SPACEWAY 1 was successfully launched on April 26, 2005, by Sea Launch.

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<sup>3</sup> 47 C.F.R. § 25.117(c).

<sup>4</sup> See News Release, "Sea Launch Investigates Results of Telstar 18 Mission," July 2, 2004 (available at [www.boeing.com/news/releases/2004/q3/nr\\_040702.html](http://www.boeing.com/news/releases/2004/q3/nr_040702.html)).

<sup>5</sup> See News Release, "Arianespace Signs Two Launch Contracts with DIRECTV," Sept. 9, 2004 (available at [www.arianespace.com/site/news/releases/presrel104\\_9\\_9\\_b.html](http://www.arianespace.com/site/news/releases/presrel104_9_9_b.html)).

However, the launch date for SPACEWAY 2, originally set for April 2005, slipped to early June, and then was finally set for June 24. The satellite was shipped to Arianespace's launch facility in Kourou, French Guiana in preparation for launch. Unfortunately, earlier this week, the satellite co-passenger scheduled to accompany SPACEWAY 2 on this Ariane launch identified a technical problem that cannot be corrected in time to meet the June 24 launch date. Accordingly, due to circumstances beyond its control, DIRECTV's launch of SPACEWAY 2 has been delayed indefinitely and it will not be able to meet its June 25, 2005 milestone.

As the Commission has recently stated, “[m]ilestone schedules are designed to ensure that licensees are proceeding with construction and will launch their satellites in a timely manner, and that the orbit spectrum resource is not being held by licensees unable or unwilling to proceed with their plans.”<sup>6</sup> Nonetheless, the Commission may extend milestones where unique and overriding public interest considerations so require<sup>7</sup> or “when the delay is due to circumstances beyond the control of the licensee,”<sup>8</sup> for in such cases there is no concern that valuable spectrum and satellite resources are being “warehoused” by a licensee.<sup>9</sup> All of these factors favoring extension are present in this case, as DIRECTV has (1) invested billions of dollars in its Ka-band program and demonstrated its intention to launch and operate the SPACEWAY 2 satellite, but (2) an intervening technical problem with another operator's satellite, over which DIRECTV has no control, has placed the launch countdown on hold indefinitely. In these

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<sup>6</sup> *VisionStar, Inc.*, 19 FCC Rcd. 14820, 14822 (Int'l Bur. 2004).

<sup>7</sup> See 47 C.F.R. § 25.117(c)(2) (stating that Commission may extend milestones where “there are unique and overriding public interest concerns that justify an extension”).

<sup>8</sup> *Loral SpaceCom Corp., Debtor-in-Possession*, 18 FCC Rcd. 21851, 21854 (Int'l Bur. 2003).

<sup>9</sup> See, e.g., *VisionStar*, 19 FCC Rcd. at 14822; *Columbia Communications Corp.*, 15 FCC Rcd. 15566, 15571 (Int'l Bur. 2000).



circumstances, there can be no conceivable policy justification for rigid enforcement of the launch milestone.

Commission precedent reflects this common-sense notion. The Commission, for example, recently extended the launch milestone of an Intelsat Ka-band satellite when its launch was delayed by the same Sea Launch anomaly that prompted DIRECTV to switch SPACEWAY 2 to an Ariane vehicle.<sup>10</sup> Similarly, the Commission extended the launch milestone of a Loral Ka-band satellite license due to unanticipated technical problems with its spacecraft that were outside of the licensee's control. In that case, the licensee had "demonstrated that construction is well underway and progressing," leading the Commission to conclude that "it would not be in the public interest to cancel the license of a company that has completed construction of approximately 80 percent of its satellite and provided a concrete plan for completing construction and launching a satellite."<sup>11</sup> On another occasion, the Commission observed that, "[i]n *every* instance where the Commission has denied a milestone extension request, construction of the satellite either had not begun or was not continuing, thus raising questions regarding the licensee's intention to proceed."<sup>12</sup>

Here, DIRECTV has done as much as, or more than, any of the licensees discussed above, as it has completed every step but the actual launch of its satellite. At the time that a technical issue with another operator's satellite – over which DIRECTV had no control – intervened, DIRECTV was in a position to achieve launch prior to the

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<sup>10</sup> See FCC File No. SAT-MOD-20040727-00148.

<sup>11</sup> See *Loral*, 18 FCC Rcd. at 21854-55.

<sup>12</sup> *GE American Communications, Inc.*, 16 FCC Rcd. 11038, 11041 (Int'l Bur. 2001).

June 25 milestone. Under the circumstances, no reasonable observer could question DIRECTV's intention to proceed with respect to the license in question.

Accordingly, as in the cases discussed above, the public interest would best be served by extension of the launch and operation milestone in this case.<sup>13</sup> The investigation of the anomaly on the non-DIRECTV satellite has just begun, and DIRECTV cannot predict how long this process will take. Although DIRECTV is making every effort to secure the next launch slot available, there are few options – and even those can experience slippage due to unforeseen complications. A six-month extension – equal to or less than the six- to sixteen-month extensions granted in prior cases<sup>14</sup> – should provide sufficient time for DIRECTV to resolve its launch schedule with Arianespace and deliver the SPACEWAY 2 satellite to its assigned orbital location.

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<sup>13</sup> Two recent decisions in which the Commission did *not* grant a Ka-band milestone extension provide a valuable contrast. In *VisionStar*, the licensee sought a three-year extension of its construction and launch milestones with only one day left on its construction milestone. In support of this request, VisionStar cited adverse financial developments in the marketplace that were unforeseen and made funding elusive, as well as the early stage of development of commercial Ka-band projects. See *VisionStar*, 19 FCC Rcd. at 14823. The Commission rejected these arguments, finding that such factors are not sufficiently compelling or beyond the licensee's control to justify an extension – especially when the licensee would have been able to meet its milestones but for its own decision to delay payments to its satellite contractor. *Id.* at 14823-27. Similarly, in *NetSat 28 Company, LLC*, 19 FCC Rcd. 17722 (Int'l Bur. 2004), the Commission declined to extend milestones for a licensee that had already received one extension and could cite no factors other than its own business decisions and a general market downturn as a basis for extension. By contrast, DIRECTV has proceeded diligently and would have met its milestone but for problems experienced by an unaffiliated satellite co-passenger.

<sup>14</sup> See *Loral*, 18 FCC Rcd. at 21856 (granting extension of launch milestone from May 2003 to September 2004); Rep. No. SAT-00247, DA 04-3176 (Oct. 1, 2004) (granting Intelsat a six-month extension).

**CONCLUSION**

For the foregoing reasons, DIRECTV respectfully requests that the launch and operation milestone applicable to its Ka-band satellite license at 99.2° W.L. be extended for six months, to December 25, 2005.

Respectfully submitted,

**DIRECTV ENTERPRISES, LLC**

By:   /s/    
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Michael D. Nilsson

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*Counsel for DIRECTV Enterprises, LLC*

Dated: June 10, 2005