

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

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)	
In the Matter of)	
)	
DISH OPERATING L.L.C.)	File No. SAT-MOD-20100329-00058
)	Call Sign S2740
Application for Minor Modification of)	
Authority To Allow Operation of EchoStar 7)	
at 118.8° W.L.)	
_____)	

OPPOSITION TO PETITION TO DISMISS OR DENY

Pursuant to Section 25.154(c) of the Commission’s rules, DISH Operating L.L.C. (“DISH”) submits this opposition to Spectrum Five LLC’s (“Spectrum Five”) Petition to Dismiss or Deny¹ in the above-captioned proceeding. DISH has requested a minor modification of its authority in order to operate the EchoStar 7 satellite at the 118.8° W.L. orbital location, within the U.S. 119° W.L. orbital cluster.²

This is a substantial objection to a minor, “housekeeping” request. The slight move of EchoStar 7 to better accommodate EchoStar 14 will have no discernible impact on Spectrum Five’s DBS license for 114.5° W.L. or on its pending 17/24 GHz Broadcast-Satellite Service (“17/GHz BSS”) application for 118.8° W.L. DISH has filed all information required for a minor modification. Nevertheless, at the request of the Bureau, DISH will submit an orbital debris mitigation plan, mooted any plausible objection to the request.

¹ Spectrum Five LLC, Petition of Spectrum Five LLC to Dismiss or Deny, File No. SAT-MOD-20100329-00058 (filed May 17, 2010) (“Spectrum Five Petition”).

² See File No. SAT-MOD-20100329-00058 (filed Mar. 29, 2010) (“Application”).

Spectrum Five's attempt to interfere with this minor fleet management matter is troubling. Serious and committed new entrants are welcome in the satellite industry, but the Commission's precedent frowns upon "strike" applications and "strike" petitions.³ The increasing scope and shrillness of Spectrum Five's objections, coupled with the scant evidence of Spectrum Five's commitment and seriousness that has come to light to date, warrant a close scrutiny of Spectrum Five's Critical Design Review submission for the DBS license,⁴ as well as its identity, real-parties-in interest, progress and plans more generally.

I. BACKGROUND

DISH has been operating EchoStar 7 over its 21 licensed DBS frequencies at the 119° W.L. cluster for over eight years. DISH has requested authority to move the EchoStar 7 satellite to 118.8° W.L.,⁵ in order to accommodate the EchoStar 14 satellite. That latter satellite, licensed

³ See *Applications of William P. Jonson and Hollis B. Jonson, d/b/a/ Radio Carrollton, For Construction Permit; Faulkner Radio, Inc. (WLBB), For Renewal of License*, Memorandum Opinion and Order, 69 FCC 2d 1,139, ¶ 22 (1978) ("the strike petition policy -- and the strike application policy on which it is based -- rest on the premise that a person who uses improper means to impede action on an application for competitive new service opens itself to the charge of abusing the Commission's processes. . . . And in considering challenges to pending applications, 'the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests.'") (internal citations omitted). See also *Applications of Grenco, Inc., For Renewal of License of Stations WCRS and WCRS-FM, Greenwood, S.C. and Radio Greenwood, Inc., For Renewal of License of Station WGSW, Greenwood, S.C.*, Memorandum Opinion and Order, 28 FCC 2d 166, ¶ 4 (1971) (holding that a "strike" application, which is motivated by an intent to obstruct or delay another application, "is not in the public interest and would bring into question the qualifications of the applicant to be a licensee").

⁴ Letter from Todd M. Stansbury, Counsel for Spectrum Five LLC, to Marlene H. Dortch, Secretary, FCC (Nov. 25, 2008), *filed in* File Nos. SAT-LOI-20050312-00062, SAT-LOI-20050312-00063.

⁵ EchoStar 7 has been operating at 118.8° W.L. under Special Temporary Authority since May 12, 2010. See Stamp Grant, File No. SAT-STA-20100219-00031 (granted Apr. 16, 2010).

by the Commission on March 10, 2010,⁶ will increase the quality of service and the amount of programming available from the 119° W.L. cluster. DISH has since launched EchoStar 14, and brought it into full operation on May 27, 2010.⁷

Spectrum Five, on the other hand, has received licenses to operate two DBS satellites at the 114.5° W.L orbital location⁸ and has filed an application to operate one 17/24 GHz BSS satellite from 118.8° W.L.⁹

II. DBS LICENSEES HAVE CONSISTENTLY BEEN AFFORDED SIGNIFICANT FLEXIBILITY TO RELOCATE THEIR SATELLITES WITHIN THE DBS ORBITAL CLUSTERS

The International Telecommunication Union (“ITU”) Radio Regulations provide that “Administrations may locate [Region 2 BSS Plan] satellites within a cluster at any orbital position within that cluster, provided they obtain the agreement of administrations having assignments to space stations in the same cluster.”¹⁰ Consistent with that rule, the Commission has previously recognized DBS providers’ need for flexibility in placement of their satellites

⁶ See *DISH Operating L.L.C. Modification of Authority to Operate at the 118.9° W.L. orbital location and Authority to Launch and Operate the EchoStar-14 Satellite*, Order and Authorization, 25 FCC Rcd 2,311 (Int’l Bur. Mar. 20, 2010).

⁷ EchoStar 14 arrived at the 119° W.L. orbital cluster on May 19, 2010, at which time DISH began transferring traffic from EchoStar 7.

⁸ *Spectrum Five, LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Service Spectrum from the 114.5° W.L. Orbital Location*, Order and Authorization, 21 FCC Rcd. 14,023 (Int’l Bur. Nov. 29, 2006), affirmed in *Spectrum Five, LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Service Spectrum from the 114.5° W.L. Orbital Location*, Memorandum Opinion and Order, 23 FCC Rcd. 3,252 (Int’l Bur. Feb. 21, 2008).

⁹ File No. SAT-LOI-20081113-00216 (filed Nov. 13, 2008).

¹⁰ ITU Radio Regulations, Appendix 30, Annex 7(B) (referenced by ITU Radio Regulations, Article 9.1).

within the DBS orbital clusters assigned under the ITU's Region 2 BSS and feeder-link Plans.¹¹

In its *2002 DBS Order*, the Commission noted that “at locations, where all 32 channels are assigned to a single operator, we have been particularly willing to allow the operator considerable freedom to locate the spacecraft anywhere within the cluster boundaries.”¹²

Furthermore, “[i]n situations involving U.S. licensees with channels assigned at the same orbital position, we believe that allowing DBS operators to coordinate amongst themselves in order to arrive at a mutually acceptable solution regarding the location of their satellites and use of their associated frequency assignments, including TT&C frequencies, will result in maximum flexibility and efficient use of the orbit and spectrum resource.”¹³

A proposed move within the cluster is therefore clearly a minor modification request. As shown below, this move will result in no appreciable change in the interference caused by the satellite to any other users of the 12.2-12.7 and 17.3-17.8 GHz bands. Indeed, if the request were not minor, it could not be processed as it would implicate the Commission's freeze on new DBS applications¹⁴ – a result that the Commission has clearly never intended. In recognition of the move's benign character, DIRECTV, the other DBS licensee at 119° W.L., has not lodged any objection.

Even though the slight move of a satellite that has operated at the nominal 119° W.L. orbital location for eight years, and will continue to do so, should not trigger the requirement of

¹¹ *Policies and Rules for the Direct Broadcast Satellite Service*, Report and Order, 17 FCC Rcd. 11,331, ¶ 118 (2002) (“*2002 DBS Order*”).

¹² *Id.*

¹³ *Id.* at ¶ 119.

¹⁴ Public Notice, Direct Broadcast Satellite (DBS) Service Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications, FCC 05-213 (rel. Dec. 21, 2005).

submitting an orbital debris mitigation plan, DISH will separately submit one at the request of the Bureau in order to facilitate grant of the application,¹⁵ mooted Spectrum Five's arguments in that regard.¹⁶

III. DISH HAS COMPLIED WITH THE COMMISSION'S RULES BY DESCRIBING ONLY THE CHANGES IT PROPOSED TO ITS AUTHORIZED OPERATIONS

Section 25.117(d)(1) of the Commission's rules require that "applications for modifications of space station authorizations shall be filed in accordance with § 25.114, *but only those items of information listed in § 25.114 that change need to be submitted*, provided the applicant certifies that the remaining information has not changed."¹⁷ DISH has done exactly that. The coverage patterns and the operating characteristics submitted in its original application are not changed by the move to 118.8° W.L.;¹⁸ therefore, DISH did not resubmit this information.

For the same reason, the Bureau should reject Spectrum Five's claim that the application does not describe the "overall system facilities, operations and services" or provide enough

¹⁵ See E-mail from Karl Kensinger, Associate Chief, Satellite Division, FCC International Bureau to Howard W. Waltzman and Brian J. Wong, Mayer Brown LLP (May 18, 2010), *filed in* File No. SAT-MOD-20100329-00058.

¹⁶ Spectrum Five claims that, if DISH's application is approved, it "would be forced to substantially alter the parameters of its 17/24 GHz BSS satellite." Spectrum Five Petition at n.27. However, as demonstrated in the orbital debris mitigation plan to be submitted in response to a request from the International Bureau, DISH will be able to coordinate with Spectrum Five to ensure both satellites are maintained with sufficient physical separation. Moreover, if an otherwise unavoidable risk develops in the future, DISH will request authority from the Commission to drift the satellite to another portion of the 119° orbital cluster.

¹⁷ *Id.* § 25.117(d)(1) (emphasis added).

¹⁸ See File Nos. SAT-A/O-20010810-00073, SAT-MOD-20010810-00071 (Call Sign S2740).

detail.¹⁹ All of the detail needed to evaluate EchoStar 7 was provided in the original application²⁰ and, to the extent that information changed, updated in DISH's application. The Technical Annex submitted with the original application provides a general description of the satellite highlighting that it provides "41 equivalent DBS channels using the 21 channels that EchoStar is licensed to use at the 119° W.L. orbital position."²¹ The Technical Annex proceeds to provide all of the required operational parameters of the satellite.²² The present application explains that the satellite will "provide service that supplements the service to be provided by EchoStar 14."²³ The services EchoStar 7 will provide – DBS – will not change, neither will its operations.²⁴ Therefore, DISH has adequately explained the proposed orbital location, the purpose of moving the satellite, and the service EchoStar 7 will provide.

A. DISH Is Not Required To Submit a New Interference Analysis Under Section 25.114(d)(13)

Spectrum Five claims that the analysis provided in response to Section 25.114(d)(13) of the Commission's rules in the original EchoStar 7 application "could not possibly be unchanged" by DISH's current request because the original filing did not consider Spectrum Five's network at 114.5° W.L.²⁵ The information submitted to the ITU describing the EchoStar 7 network in

¹⁹ Spectrum Five Petition at 19-20 (citing 47 C.F.R. § 25.114(b), (d)(1)).

²⁰ See File Nos. SAT-A/O-20010810-00073, SAT-MOD-20010810-00071 (Call Sign S2740).

²¹ File No. SAT-A/O-20010810-00073, Technical Annex at 1.

²² *Id.*

²³ Application at 1-2.

²⁴ 47 C.F.R. § 25.117(d).

²⁵ Spectrum Five Petition at 16-17.

response to Section 25.114(d)(13) was filed well before Spectrum Five filed its network with the ITU. The minor move of EchoStar 7 does not affect the accuracy of that information.

By the same token, Spectrum Five's obligation to protect EchoStar 7 from interference has not changed. Spectrum Five argues that, because it "agreed that it would 'tolerate additional inference' to its operations at 114.5° W.L. from other systems" when it accepted the condition the Commission placed on that authority, it would be "unfair if the conditions of the Tweener approval could in essence be changed after the fact merely on DISH's request."²⁶ Spectrum Five's acceptance of the conditional license granted by the Commission can hardly be proffered as evidence of its generosity, and it can certainly not be invoked in an attempt to read the condition narrowly. In any event, because DISH's minor move does not appreciably increase interference into Spectrum Five's proposed satellites, the condition on Spectrum Five's license has not changed, in essence or otherwise. Spectrum Five's complaint that it should not be required to coordinate with a moving target is off the mark. For purposes of interference between the two satellites,²⁷ the "target" will not move at all.

This discussion assumes, of course, that Spectrum Five's proposed operations will come to fruition – an assumption that appears increasingly precarious. To date, Spectrum Five has demonstrated little ambition to coordinate its operations with DISH.²⁸ In a letter to the Bureau

²⁶ Spectrum Five Petition at 18 (citing *Spectrum Five, LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Service (BSS) Spectrum from the 114.5° W.L. Orbital Location*, Order and Authorization, 21 FCC Rcd. 14023, ¶¶ 29-30 (2006) ("*Spectrum Five Tweener Order*").

²⁷ Spectrum Five Petition at 18.

²⁸ While Spectrum Five has indicated in a separate proceeding that it sent a letter requesting coordination to Richard Blair at DISH's predecessor, EchoStar Communications Corporation, on February 9, 2007, DISH has no record of a Richard Blair being employed by the company and has no record of receiving the letter. Letter from Howard W. Waltzman, Counsel

submitted on February 6, 2009, DIRECTV has likewise indicated that Spectrum Five had not yet contacted it to begin coordination discussions.²⁹ Moreover, the technical specifications of Spectrum Five's satellites are likely to change in order to accommodate both EchoStar 7 and DIRECTV 7S. In fact, the Bureau has recognized the likelihood that Spectrum Five would have to revise its satellite design in order to accommodate both DISH and DIRECTV's networks.³⁰ These uncertainties render Spectrum Five's objections more speculative still.

IV. CONCLUSION

For the foregoing reasons, DISH requests that the Bureau reject Spectrum Five's Petition to Dismiss or Deny DISH's application for a minor modification of its authority to operate EchoStar 7 at 118.8° W.L. and, in turn, expeditiously grant the application.

to Spectrum Five LLC, to Marlene H. Dortch, Secretary, FCC, (Jan. 8, 2010), *filed in* File Nos. SAT-LOA-20090518-00053; SAT-AMD-20090604-00064.

²⁹ See Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, at 2 (Feb. 6, 2009), *filed in* SAT-LOI-20050312-00062.

³⁰ *Spectrum Five Tweener Order* at ¶ 18 (“[W]e recognize that Spectrum Five will have to conduct coordination negotiations with the affected DBS operators at the 110° W.L. and 119° W.L. orbital locations, and that the characteristics of its downlink antenna beams may change in order to achieve agreement with those operators.”).

Respectfully submitted,

DISH Operating L.L.C.

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May 27, 2010

DECLARATION OF DARREN HAMILTON

I, Darren Hamilton, hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on May 27, 2010.

A handwritten signature in black ink, appearing to read 'D Hamilton', written over a horizontal line.

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CERTIFICATE OF SERVICE

I certify that on this 27th day of May, 2010, I caused to be hand delivered a copy of the foregoing upon the following:

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