

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

REPLY IN SUPPORT OF PETITION TO DISMISS OR DENY

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June 4, 2010

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SUMMARY

DISH does not dispute that its application omits the orbital debris mitigation assessment required by 47 C.F.R. § 25.114(d)(14)(iii) in that DISH ignored Spectrum Five’s long-pending application to operate a 17/24 GHz Broadcasting Satellite Service (“BSS”) satellite from the 118.8° W.L. orbital location. DISH also does not dispute that there is no basis for a waiver of this requirement, which the Commission has expressly held applies to applications filed after October 19, 2005.¹ Instead, DISH asserts that its willful failure to comply with Section 25.114(d)(14)(iii) is somehow excused because DISH eventually intends to provide an orbital debris mitigation plan in response to the Bureau’s May 18, 2010, request for DISH to file such a plan in accordance with the Commission’s rules.² This contention is specious: under the Commission’s longstanding regulations and practice, DISH’s failure to submit an orbital debris mitigation plan clearly required by the Commission’s rules means that the application was materially defective and incomplete when filed.

“[I]t is not the Commission’s duty to perfect a materially deficient application” by requesting an analysis that should have been included in the application all along.³ To the contrary, “the Bureau has strictly enforced its Part 25 rules, which *require* the Bureau to return as

¹ Public Notice, *Disclosure of Orbital Debris Mitigation Plans, Including Amendment of Pending Applications*, 20 FCC Rcd. 16278, 16279 (Oct. 13, 2006) (“*Orbital Debris Mitigation Plans Notice*”).

² Opposition to Petition to Dismiss or Deny, *In re DISH Operating L.L.C. Application for Minor Modification of Authority To Allow Operation of EchoStar 7 at 118.8° W.L.*, File No. SAT-MOD-20100329-00058, Call Sign: S2740 (filed May 17, 2010) (“*Opposition*”), at 1, 5.

³ Memorandum Opinion and Order, *In re: EchoStar Satellite LLC Petition for Reconsideration—Application for Authority to Construct, Launch and Operate Geostationary Satellites In the Fixed-Satellite Service Using the Ka And/or extended Ku-bands at the 83° W.L., 105° W.L., 113° W.L. and 121° W.L. Orbital Locations*, File Nos. SAT-LOA-20030827-00180 SAT-LOA-20030827-00182, SAT-LOA-20030827-00185, SAT-LOA-20030827-00187, Call Signs: S2493, S2495, S2498, S2500, 21 FCC Rcd. 4060, ¶ 13 (rel. Apr. 14, 2006) (“*2006 EchoStar Reconsideration Order*”).

unacceptable any application that is defective with respect to completeness of answers to questions, informational showings, [or] internal inconsistencies.”⁴ The Commission must do the same here, and deny the application because in its original, electronically filed form, the application patently does not comply—indeed, does not even *attempt* to comply—with the Commission’s orbital debris mitigation assessment requirement.⁵

The Application is also fatally defective on other, independent grounds. EchoStar 7’s relocation to the 118.8° W.L. orbital location constitutes a change in that satellite’s “technical characteristics,” requiring the applicant, *inter alia*, to set forth complete and detailed technical analyses with respect to Appendix 4 and Annex 1 to Appendices 30 and 30A of the ITU’s Radio Regulations. *See* 47 C.F.R. § 25.114(d)(13). The Opposition implicitly acknowledges that the Application does not contain this information, but asserts—without a trace of supporting evidence—that no additional submission was required because the EchoStar 7’s operational characteristics and impact on other systems were “not changed by the move to 118.8° W.L.”⁶ The Petition explained in detail why this claim is false, yet DISH conspicuously fails to respond to Spectrum Five’s detailed factual showings.⁷

⁴ *Id.* (emphasis added and internal quotation marks omitted).

⁵ Application, *In re DISH Operating L.L.C. Application for Minor Modification of Authority To Allow Operation of EchoStar 7 at 118.8° W.L.*, File No. SAT-MOD-20100329-00058, Call Sign S2740 (filed Mar. 29, 2010) (“Application”)

⁶ Opposition at 5.

⁷ *E.g.*, Petition of Spectrum Five LLC to Dismiss or Deny, *In re DISH Operating L.L.C. Application for Minor Modification of Authority To Allow Operation of EchoStar 7 at 118.8° W.L.*, File No. SAT-MOD-20100329-00058, Call Sign: S2740 (filed May 17, 2010) (“Petition”), at 17 n.43 (explaining impact of DISH’s proposed relocation on Spectrum Five’s licensed satellite network at 114.5° W.L.); *id.* at 18 n.46 (explaining impact of DISH’s proposed relocation on Spectrum Five’s pending application for a BSS satellite at 118.8° W.L.).

For these reasons as well, the Application should be dismissed or denied. After the Application is dismissed or denied, the Bureau must require DISH to provide all of the requisite analyses if DISH chooses to submit a new application.

ARGUMENT

I. DISH’S PROMISE TO SUBMIT AN ORBITAL DEBRIS MITIGATION ASSESSMENT DOES NOT “MOOT” SPECTRUM FIVE’S CHALLENGE TO DISH’S ORIGINAL APPLICATION, WHICH WAS DEFECTIVE WHEN FILED AND THEREFORE MUST BE DISMISSED OR DENIED.

The Opposition does not seriously engage in an explanation regarding why the Application does not comply with the Commission’s orbital debris mitigation assessment requirement. Rather, DISH’s principal argument is that, whatever the Application’s original deficiencies, Spectrum Five’s objections have been “moot[ed]” because DISH will submit a plan “at the request of the Bureau in order to facilitate grant of the application.”⁸ DISH is incorrect: an application that was facially defective when filed—here, DISH deliberately left out *any consideration whatsoever* of the issues posed by physical coordination with Spectrum Five’s pending BSS satellite application at 118.8° W.L. and a plan for addressing those issues—cannot be amended or otherwise supplemented into compliance with the Commission’s rules. The only appropriate course of action is dismissal or denial.

A. The Application Was Defective And Incomplete With Respect To The Orbital Debris Mitigation Assessment Requirement.

As Spectrum Five explained in the Petition (and for which DISH provides no rebuttal in the Opposition), DISH’s application to relocate EchoStar 7 to the 118.8° W.L. orbital position was “defective with respect to completeness” and did not “substantially comply” with the Commission’s orbital debris mitigation assessment requirement. *See* 47 C.F.R. § 25.112(a).

⁸ Opposition at 5.

Spectrum Five demonstrated—and DISH does not dispute—that the Commission requires *all* applications for a modified satellite authorization filed after October 19, 2005 to contain an assessment of the risk that the space station will become a source of orbital debris.⁹ Spectrum Five established—and again, DISH does not dispute—that this assessment must consider satellites “reasonably expected to be located at” the requested orbital location, including any “systems applied for and under consideration.”¹⁰ Spectrum Five also pointed out that Spectrum Five has an application, pending for a year and a half and accepted for filing almost a full year ago, to operate a BSS satellite from the 118.8° W.L. orbital location that DISH has requested for EchoStar 7.¹¹ Finally, DISH does not and cannot deny that it has acknowledged in previous filings *both* that “satellite networks . . . currently under consideration by the FCC” must be

⁹ Petition at 7, 12. DISH asserts in passing that a “slight move [*i.e.*, of a tenth of a degree from EchoStar 7’s present location and two-tenths of a degree from its authorized location] . . . should not trigger the requirement of submitting an orbital debris mitigation plan” (Opposition at 4-5), but this assertion is not supported by any authority. By their plain terms, the Commission’s regulations contain no exception for purportedly “slight” changes in orbital location—particularly when, as here, there would be an increased orbital debris risk resulting from operation at the proposed location. Petition at 11. “[G]ranting a waiver of our requirement that applications be substantially complete would undermine the purpose of this requirement and open the door to future speculators,” who might submit “incomplete applications with the aim of obtaining ‘first-in-line’ status.” Order on Reconsideration, *In re: Pegasus Development DBS Cooperation Authority to Construct, Launch, and Operate a System for Direct Broadcast Satellites in the Broadcasting Satellite Service*, File Nos. SAT-LOA-20020322-00032, SAT-LOA-20020322-00033, SAT-LOA-20020322-00034, 21 FCC Rcd. 6403, ¶ 7 & n.22 (rel. June 7, 2006) (“*Pegasus Reconsideration Order*”) (denying petition for reconsideration of dismissal of application that failed to comply with the orbital debris mitigation plan amendment requirement).

¹⁰ *Id.* at 7 (quoting 47 C.F.R. § 25.114(d)(14)(iii)), 9 (quoting Second Report and Order, *In re Mitigation of Orbital Debris*, 19 FCC Rcd. 11567, ¶ 51 n.140 (rel. June 21, 2004) (“*Orbital Debris Report and Order*”).

¹¹ See *Petition for Declaratory Ruling to Serve the U.S. Market from the 118.8° W.L. Orbital Location in the 17/24 Broadcasting Satellite Service Band*, File No. SAT-LOI-20080910-00178 (filed Nov. 13, 2008) (“Spectrum Five 118.8° W.L. Application”); Public Notice, DA 08-2699, Report No. SAT-00569, *available at* 2009 WL 1576567 (rel. June 5, 2009).

considered in an orbital debris mitigation assessment, *and* that it was aware that Spectrum Five had a pending application to operate a satellite at the 118.8° W.L. orbital location.¹²

Given all this, it is unsurprising that the Opposition makes no substantial attempt to defend the Application's deliberate omission of an orbital debris mitigation analysis taking into account Spectrum Five's pending 118.8° W.L. application, which makes the Application as filed defective and incomplete.

B. DISH's Defective Application Cannot Be Cured By Its Post-Filing Submission Of An Orbital Debris Mitigation Assessment.

On at least a half dozen prior occasions, the Commission has dismissed applications that were "missing technical information concerning . . . orbital debris mitigation."¹³ The Commission must do the same here and dismiss (or simply deny on the merits)¹⁴ DISH's defective and incomplete application to relocate EchoStar 7 to the 118.8° W.L. orbital location.¹⁵

DISH nonetheless argues that its submission of an orbital debris mitigation plan in response to the Bureau's May 18, 2010 request will "moot[]" Spectrum Five's objection to its

¹² Petition at 9-10 (citing *In re EchoStar Satellite Operating L.L.C. Application for Minor Modification of DBS Authorization and Authority to Launch the EchoStar 14 Satellite and to Operate it at 118.9° W.L.*, File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064, Call Sign S2790 (filed May 18, 2009) ("*EchoStar 14 Application*"), at Attachment A, at A.10.3).

¹³ Petition at 8 n.23 (collecting decisions), 12 n.33 (collecting decisions); *see also Pegasus Reconsideration Order*, 21 FCC Rcd. 6403, ¶ 1 (affirming "dismissal of . . . applications for three 17 GHz satellite space stations" for failure to "include an orbital debris mitigation plan, as required by the Commission's rules").

¹⁴ *See 2006 EchoStar Reconsideration Order*, 21 FCC Rcd. 4060, ¶ 15 (explaining that "whether dismissed or denied," an application that does not contain required information cannot be granted because Commission approval would not be "consistent with the Commission's rules and policies").

¹⁵ *Orbital Debris Mitigation Plans Notice*, 20 FCC Rcd. at 16279 ("All applications filed after October 19, 2005, that require submission of Section 25.114 information *must* include an orbital mitigation disclosure as part of the application or *will be dismissed as incomplete.*") (emphasis added).

application. This contention is fundamentally inconsistent with the Commission’s first-come, first-served licensing system, under which DISH was required to get it right the first time or not at all. The Commission has made it clear that although *minor* mistakes, such as typographical errors, will not render an application defective, *serious* omissions—when, as here, “an application wholly fails to provide a technical showing required under the Commission’s rules”—do compel dismissal.¹⁶ The Commission strictly enforces the rule that applications that are not substantially complete or otherwise defective when filed must be dismissed, because “any relaxation of [this] requirement” would disrupt the “first-come, first-served” priority regime for space station applications.¹⁷

DISH’s attempt to cure its defective Application by promising to unveil an orbital debris mitigation assessment in response to the Bureau’s May 18, 2010 request must be rejected. The Commission’s regulations unambiguously forbid amendments to defective space station applications. 47 C.F.R. § 25.116(b)(5). DISH should not be permitted to *implicitly* amend its defective Application by submitting an orbital debris mitigation plan in response to the Bureau’s request. Although the Commission’s licensing application procedures do allow the Commission to “request from any party at any time additional information concerning any application” (*id.* § 25.111(a)), Section 25.111(a) does not trump Section 25.116(b)(5)’s express prohibition on amendments to defective space station applications. Nothing in Section 25.111(a) states that

¹⁶ Order and Authorization, *In re: DirecTV Enterprises, LLC Application for Authorization to Launch and Operate DIRECTV RB-2, a Satellite in the 17/24 GHz Broadcasting Satellite Service at the 102.825° W.L. Orbital Location*, File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, SAT-AMD-20080321-00077, Call Sign: S2712, 24 FCC Rcd. 9393, ¶ 22 n.62 (rel. July 28, 2009) (“*DIRECTV RB-2 Order*”).

¹⁷ *In re Amendment of the Commission’s Space Station Licensing Rules and Policies*, IB Docket No. 02-34, 18 FCC Rcd. 10760, ¶ 244 (rel. May 19, 2003) (“*First Space Station Licensing Reform Order*”), modified by Erratum, DA 03-2861 (rel. June 26, 2003) and Second Erratum (rel. Sept. 10, 2003); see also 47 C.F.R. § 25.112(a)(1)-(2).

such “additional information” can be used to amend or cure an application that, like DISH’s, was defective when originally filed within the meaning of Section 25.112 because the Application “wholly fail[ed] to provide a technical showing required under the Commission’s rules.”

The Bureau’s rulings confirm this understanding of the Commission’s regulations, including a 2006 denial of a request for reconsideration filed by EchoStar Satellite LLC.¹⁸ There, the Bureau rejected EchoStar’s argument that the Satellite Division should have requested additional information before denying EchoStar’s applications. The Bureau explained that “[w]hile the Commission may request additional information from any party at any time concerning an application, *it is not the Commission’s duty to perfect a materially deficient application.* With the adoption of the *First Space Station Reform Order*, the Bureau has *strictly enforced* its Part 25 rules, which *require* the Bureau to return as unacceptable any application that is ‘defective with respect to completeness of answers to questions, informational showings, [or] internal inconsistencies.’”¹⁹ The Bureau’s rulings in the *Pegasus Reconsideration Order*,²⁰ *2004 EchoStar Reconsideration Order*,²¹ and the *PanAmSat Reconsideration Order*²² comport with the *2006 EchoStar Reconsideration Order*.

¹⁸ See *2006 EchoStar Reconsideration Order*, 21 FCC Rcd. 4060, ¶¶ 13-14.

¹⁹ *Id.* ¶ 13 (emphasis added and quoting 47 C.F.R. § 25.112(a)(1)).

²⁰ *Pegasus Reconsideration Order*, 21 FCC Rcd. 6403, ¶ 7.

²¹ Order on Reconsideration, *In re EchoStar Satellite LLC Application for Authority to Construct, Launch and Operate a Geostationary Satellite in the Fixed Satellite Service Using the Extended Ku-Band Frequencies at the 101° W.L. Orbital Location*, 19 FCC Rcd. 24953, ¶ 13 (rel. Dec. 27, 2004) (“*2004 EchoStar Reconsideration Order*”).

²² Order on Reconsideration, *In re Applications of PanAmSat Licensee Corp. For Authority to Construct, Launch, and Operate a Hybrid Satellite System in its Separate International Communications Satellite System*, 18 FCC Rcd. 23916, ¶¶ 6-7 (rel. Nov. 13, 2003) (“*PanAmSat Reconsideration Order*”).

It is true that the Commission has, on occasion, asked applicants to provide additional information. But a request for additional information is appropriate only under circumstances not present here. For example, in 2004, the Bureau readily disposed of EchoStar’s argument that the Bureau should have “requested missing information from [it], rather than dismiss” its defective application. The Bureau explained that, when additional information has been requested, it was because either (1) the applications were filed *before* the Bureau “clarif[ied]” an ambiguous procedural requirement or (2) the application was *already* “substantially complete when filed, in that [the applicant] provided all the information required by the Commission’s rules” and the request simply asked the applicant “to clarify and to reformat certain information.”²³ The Bureau confirmed the very limited function of requests for additional information in the *2006 EchoStar Reconsideration Order*, explaining that applicants have been provided with the “opportunity to supplement their applications” when (1) “information requirements” are “clarif[ied]” by the Commission or (2) when an “*already* submitted . . . analysis” needs to be “supplement[ed].”²⁴ Neither of these exceptions applies.

First, DISH cannot possibly claim to have been “confus[ed] regarding Bureau policy”²⁵ about the need to submit a complete orbital debris mitigation assessment with its application. Not only is the Commission’s policy on this point crystal clear,²⁶ but DISH *itself* has previously recognized its obligation to consider Spectrum Five’s pending 118.8° W.L. application in the orbital debris mitigation analysis.²⁷ *Second*, the Application did not even “submit a technical

²³ *2004 EchoStar Reconsideration Order*, 19 FCC Rcd. 24953, ¶¶ 15-16.

²⁴ *2006 EchoStar Reconsideration Order*, 21 FCC Rcd. 4060, ¶ 14.

²⁵ *2004 EchoStar Reconsideration Order*, 19 FCC Rcd. 24953, ¶ 15.

²⁶ Petition at 12.

²⁷ *Id.* at 9-10.

analysis at all or otherwise attempt to demonstrate” that it satisfied the orbital debris mitigation assessment requirements with respect to Spectrum Five’s application to operate a satellite at 118.8° W.L.²⁸ DISH “asserted only that it did not need to submit an analysis”²⁹ because of its unfounded claims—which the Petition thoroughly refuted (at pp. 8-13)—that its proposed relocation would not “change the overall orbital debris risk environment” or that the requirement should be waived.³⁰ Thus, the Application was not “substantially complete when filed,” and it would be improper to consider DISH’s response to the Bureau’s request that DISH provide an orbital debris mitigation statement in assessing whether the Application was defective and therefore subject to dismissal.³¹

The speciousness of DISH’s position is evidenced most clearly in DISH’s attempt to refute Spectrum Five’s assertions about the impact of the relocation of EchoStar 7 by relying on its “orbital debris mitigation plan *to be submitted* in response to a request from the International Bureau.”³² DISH is relying on information known only to it. Such a position violates all precepts of fundamental fairness and administrative procedure.

* * *

The uniform line of rulings in the *2006 EchoStar Reconsideration Order*, *Pegasus Reconsideration Order*, *2004 EchoStar Reconsideration Order*, and *PanAmSat Reconsideration*

²⁸ *2006 EchoStar Reconsideration Order*, 21 FCC Rcd. 4060, ¶ 14. For example, the Application does not even take note of Spectrum Five’s 118.8° W.L. application. It does not address how EchoStar 7 would physically coordinate with such satellites reasonably expected to have overlapping station-keeping volumes at the requested orbital location. Nor does it identify any possible physical coordination measures that EchoStar 7 might take.

²⁹ *Id.*

³⁰ Application at 4

³¹ *2004 EchoStar Reconsideration Order*, 19 FCC Rcd. 24953, ¶ 16.

³² Opposition at 5 n.16 (emphasis added).

Order was correct. A contrary interpretation of Section 25.111(a) would enable the Bureau to exempt *one* defective application from Section 25.116(b)(5)'s bar on amendments merely by asking for information that might cure the defects of that application, while dismissing *another* equally defective application without affording an opportunity for amendment. This would afford DISH an advantage that the Bureau has not provided to other applicants.

II. DISH CANNOT RELY ON THE INFORMATION SUBMITTED IN THE ORIGINAL ECHOSTAR 7 APPLICATION BECAUSE ECHOSTAR 7'S PROPOSED OPERATIONS AT 118.8° W.L. WILL CHANGE ITS OPERATIONAL CHARACTERISTICS.

The Application should be dismissed or denied based upon DISH's failure to submit an orbital debris mitigation assessment required by the Commission's rules. But the Application should not simply be dismissed or denied on that basis alone, and DISH should not be permitted merely to submit a new application that contains an orbital debris mitigation assessment, but that does not make any other changes. The absence of other technical showings is just as glaring and equally in violation of the Commission's rules as the Application's failure to include an orbital debris mitigation assessment.

Although DISH states at various points that the proposed relocation of EchoStar 7 to 118.8° W.L. "will result in no appreciable change in the interference caused by the satellite" and will not "appreciably increase interference with Spectrum Five's proposed satellites," DISH never supplies any *factual support* for those assertions.³³ DISH does not even bother to explain how moving EchoStar 7 a tenth of a degree closer relative to its present location—and two-tenths of a degree relative to its authorized location—to Spectrum Five's licensed satellite network at 114.5° W.L. would not increase the interference produced by EchoStar 7. Nor has DISH

³³ Opposition at 4, 7.

clarified how service provided from EchoStar 7 would differ given DISH's operation of EchoStar 14.

DISH asserts that it has “flexibility” to place EchoStar 7 at any location within the “nominal 119° W.L.” orbital cluster. Opposition at 3-4. But even if Annex 7 to Appendix 30 of the ITU's regulations gives *administrations* such flexibility in making use of an assigned orbital location, DISH has cited no Commission rule that would permit a *licensee* (e.g., DISH) to move without first obtaining the Commission's authorization—and any request for such modification of authorization would necessarily have to make all the technical showings required by Section 25.114(d). *See* 47 C.F.R. § 25.114(b). If prior approval were not actually required, it is extraordinary that DISH would now be seeking permission to move EchoStar 7 to 118.8° W.L., rather than simply doing it. In fact, the Commission has required licensees to obtain specific authorization providing for “flexible operation of the spacecraft within the DBS cluster.”³⁴ Spectrum Five is not aware of the Bureau granting any such authority to DISH, which presents no evidence that EchoStar 7 ever received such a “flexible” authorization to operate at any location within the “nominal 119° W.L.” cluster.³⁵

To aid the Bureau's evaluation of the Application, Spectrum Five's Petition explained in detail why the Application's blithe assertion that the relevant “information has not changed”

³⁴ Memorandum Opinion and Order, *In re: EchoStar Satellite Corporation Application for Modification to Direct Broadcast Satellite Authorization and for Operation Authority*, File No. DBS-88-02, New IBFS No. SAT-MOD-19990419-00043, DA 99-1758, 15 FCC Rcd. 6727, ¶ 8 (rel. Sept. 1, 1999); *see also* Memorandum Opinion and Order, *In re: Application of MCI Telecommunications Corporation for Modification of Direct Broadcast Satellite Authorization*, File No. 84-SAT-ML-97, New IBFS No. SAT-MOD-19970505-00039, DA-99-1125, 14 FCC Rcd. 9966, ¶ 3 (rel. June 8, 1999).

³⁵ Rather, it appears that the Commission authorized EchoStar 7 to operate at the 119° W.L. orbital location. *See* Petition at 5 & n.15. Thus, the Application effectively seeks to relocate EchoStar 7 by *two-tenths* of a degree from its originally authorized orbital location.

from the original EchoStar 7 application (47 C.F.R. § 25.117(d)(1)) could not possibly be correct, and why DISH was obliged to provide *updated* technical analyses with respect to Appendix 4 and Annex 1 to Appendices 30 and 30A of the ITU’s Radio Regulations (*id.* § 25.114(d)(13)) as well as a complete description of EchoStar 7’s “overall system facilities, operations and services” at the proposed location (*id.* § 25.114(b), (d)(1)). Among other things, the Petition showed that moving EchoStar 7 to 118.8° W.L. would produce substantially greater interference with Spectrum Five’s authorized satellite network at 114.5° W.L.—***in fact, up to 35 percent more interference in certain geographic locations.***³⁶ Any relocation also would require careful consideration of EchoStar 7’s effect on Spectrum Five’s *Tweener* obligations.³⁷ Additionally, the Petition demonstrated that EchoStar 7’s proposed relocation would potentially exacerbate space-path interference issues with respect to Spectrum Five’s pending 118.8° W.L. application.³⁸

³⁶ Petition at 16-17 n.43. The decreased angular spacing with respect to Spectrum Five’s licensed satellite network at 114.5° W.L. resulting from EchoStar 7’s operation at 118.8° W.L. instead of 119.0° W.L. would reduce the discrimination of a 45 cm reference antenna by up to 1.86 dB at certain U.S. locations. *See id.*

³⁷ Petition at 18-19. DISH insists that Spectrum Five’s fears that it will effectively be required to coordinate with a “moving target” are off the mark because “[f]or purposes of interference between the two satellites [*i.e.*, EchoStar 7 at 118.8° W.L. and Spectrum Five’s licensed satellite network at 114.5° W.L.], the ‘target’ *will not move at all.*” Opposition at 7 (emphasis added). If this unsupported assertion is considered at all, Spectrum Five respectfully submits that DISH should be held to its representation and that any relocation of EchoStar 7 should be subject to the dual conditions that: (1) EchoStar 7 will be given no greater interference protection at the 118.8° W.L. orbital location than it would have received at 119.0° W.L. and (2) EchoStar 7 will not be permitted to cause any more interference to Spectrum Five’s 114.5° W.L. satellite network than if EchoStar 7 had remained at its original 119.0° W.L. orbital location.

³⁸ Petition at 18 n.46. Because any additional space path interference would be the result of DISH’s unilateral decision to move EchoStar 7 to the 118.8° W.L. orbital location, Spectrum Five similarly submits (*see supra* footnote 37) that any relocation of EchoStar 7 must also be subject to the express condition that EchoStar 7 will receive no greater protection from space

(continued)

Instead of addressing the Petition’s “specific allegations of fact” that establish a “substantial and material question of fact” that granting the Application would be “*prima facie* inconsistent with the public interest” and the Commission’s rules and regulations,³⁹ the Opposition rests on assertion, unsupported by any accompanying technical analysis, that there would be no changes in EchoStar 7’s operating characteristics. In the face of Spectrum Five’s unrebutted factual showing that information pertaining to EchoStar 7’s proposed operations *will* change, DISH’s bare “certifi[cation] that the . . . information has not changed” cannot be accepted by the Commission. *Cf.* 47 C.F.R. § 25.117(d)(1). The Application is defective, and should therefore be dismissed, or, in the alternative, denied, because it does not comply with the Commission’s regulations regarding the information that must be provided in an application for a modification to a space station authorization. Thus, even if DISH submits a new application and that application contains the orbital debris mitigation assessment required by the Commission’s rules, the new application would be defective and subject to dismissal or denial unless it *also* includes the additional technical showings addressed here and in the Petition.⁴⁰

CONCLUSION

DISH’s Application to relocate EchoStar 7 to 118.8° W.L. should be dismissed, or, in the alternative, denied on the merits.

path interference at the 118.8° W.L. orbital location than it would have received had it remained at its originally authorized 119.0° W.L orbital location.

³⁹ Order and Authorization, *In re: Final Analysis Communications Services, Inc.*, File No. SAT-T/C-20020125-00010, DA 02-2004, 17 FCC Rcd. 16062, ¶ 10 nn.20-21 (rel. Aug. 19, 2002) (citing 47 U.S.C. § 309).

⁴⁰ Petition at 15-20.

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June 4, 2010

DECLARATION OF TOM SHARON

I, Tom Sharon, hereby declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that I have personal knowledge of such allegations of fact as contained therein (except for those matters of which official notice may be taken). See 47 C.F.R. § 25.154(a)(4).

Executed on June 4th, 2010, in Duluth, GA.



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CERTIFICATE OF SERVICE

I, Howard W. Waltzman, hereby certify that on this 4th day of June, 2010, I caused to be hand-delivered a true copy of the foregoing, upon the following:

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