

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

In the Matter of)
)
Spectrum Five LLC) File No. _____
)
Petition for Declaratory Ruling To Modify Its)
Authorization to Serve the U.S. Market Using)
BSS Spectrum from the 114.5° W.L. Orbital)
Location)

**PETITION FOR DECLARATORY RULING
TO EXTEND OR TO WAIVE INTERIM CONSTRUCTION MILESTONE**

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November 26, 2010

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Spectrum Five LLC (“Spectrum Five”), pursuant to Sections 1.2 and 25.137(f) of the Commission’s rules,¹ hereby requests a declaratory ruling to extend or waive the interim construction milestone associated with its authorization to provide Direct Broadcast Satellite (“DBS”) service in the United States from a Netherlands-authorized “tweener” satellite network at 114.5° W.L. The FCC’s current “market access” authorization specifies November 29, 2010 as the date for Spectrum Five to complete construction of its first satellite. This interim date is two years earlier than the specified November 29, 2012 date for commencement of operations of Spectrum Five’s authorized network. As explained below, the public interest in obtaining access to additional DBS service from a new entrant, coupled with the technological and international policy challenges presented by development of the first-ever “tweener” system authorized within the primary U.S. arc, support extension or waiver of the interim construction milestone so that Spectrum Five may proceed to provide competition in the U.S. DBS market.

¹ 47 C.F.R. §§ 1.2, 25.137.

I. BACKGROUND AND SUMMARY

On November 29, 2006, over vigorous opposition from the two incumbent U.S. DBS operators, the International Bureau released a declaratory ruling authorizing Spectrum Five to provide DBS service in the United States from the 114.5° W.L. orbital location using satellites authorized by the Kingdom of the Netherlands.² Spectrum Five’s “market access” authorization is one of only two grants issued concurrently by the FCC for “tweener” DBS satellites—satellites that leverage technological improvements to reduce orbital spacing in the DBS band from 9 degrees to 4.5 degrees, thus maximizing spectrum efficiency.³ In granting this authority, the International Bureau found that Spectrum Five’s “tweener” system would provide “increased competition in the U.S. DBS market,” which “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.”⁴

In response to the International Bureau’s grant of authority to Spectrum Five, the two incumbent DBS operators, EchoStar Satellite L.L.C. (“EchoStar,” which supplies satellite capacity to its commonly-owned company DISH Network) and DIRECTV Enterprises, LLC (“DIRECTV”), filed Applications for Review on December 29, 2006.⁵ Both sought review and

² *Spectrum Five LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broad. Satellite Spectrum from the 114.5° W.L. Orbital Location*, Order and Authorization, 21 FCC Rcd 14,023 (2006) (“*Spectrum Five 2006 Authorization*”).

³ Despite its vociferous opposition to Spectrum Five’s request for market access, EchoStar applied for and received authority to operate its own U.S. “tweener” satellite network from the 86.5° W.L. orbital location. *EchoStar Satellite L.L.C., Application to Construct, Launch, and Operate a Direct Broadcast Satellite at the 86.5° W.L. Orbital Location*, Order and Authorization, 21 FCC Rcd 14045 (2006).

⁴ *Spectrum Five 2006 Authorization*, 21 FCC Rcd 14,023 (¶ 1).

⁵ DIRECTV Enterprises, LLC Application for Review, IBFS File Nos. SAT-LOI-20050312-00062, SAT-LOI-20050312-00063 (filed Dec. 29, 2006) (“*DIRECTV Application for Review*”); EchoStar Satellite L.L.C. Application for Review, IBFS File Nos. SAT-LOI-

reversal of the Spectrum Five grant on the grounds that the International Bureau did not have delegated authority to act on the questions presented by Spectrum Five's application and that Spectrum Five's proposed network was technically incompatible with the established incumbents' systems. Specifically, DIRECTV argued that the Bureau's action was inconsistent with Commission statements in a yet to be completed rulemaking proceeding concerning processing of "reduced spacing" proposals (the "*DBS Notice*").⁶ EchoStar's application for review challenged the Bureau's action on similar grounds, contending that by acting on Spectrum Five's requests, the Bureau impermissibly chose to proceed through adjudication, and thereby improperly prejudged issues raised in the *DBS Notice*.⁷ Over a year later, on February 25, 2008, the full Commission rejected these claims and affirmed the International Bureau's grant of market access to Spectrum Five, finding that the Bureau properly acted within the scope of its delegated authority when it granted Spectrum Five's petitions for declaratory ruling.⁸ Neither DIRECTV nor EchoStar sought further review, and the FCC's order ultimately became final.

Even after the Commission affirmed the International Bureau's grant of market access,

20050312-00062, SAT-LOI-20050312-00063 (filed Dec. 29, 2006) ("*EchoStar Application for Review*").

⁶ DIRECTV Application for Review at 3-5, citing *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduce Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States*, Notice of Proposed Rulemaking, IB Docket No. 06-160, Report No. SPB-196, 21 FCC Rcd 9443 (2006) ("*DBS Notice*").

⁷ *EchoStar Application for Review* at 4.

⁸ *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 3252 (2008) (denying applications for review filed by DIRECTV Enterprises, LLC, EchoStar Satellite L.L.C., and Telesat Canada seeking review and reversal of the International Bureau's grant of Spectrum Five's market access authorization).

Spectrum Five continued to encounter difficulties protecting its right to enter the U.S. market for DBS services. First, the Commission authorized EchoStar to bring into operation co-frequency, higher powered satellites adjacent to 114.5° W.L., which will increase interference to the Spectrum Five network notwithstanding internationally-protected rights held by the Netherlands.⁹ Specifically, in January 2008, the International Bureau granted EchoStar authority to launch and operate EchoStar 11, a DBS satellite at the 110° W.L. orbital location, with parameters that exceeded existing criteria set forth in the existing ITU Region 2 BSS Plan and contrary to a request with higher ITU date priority by the Netherlands for modification of the Region 2 Plan at 114.5 W.L.¹⁰ In light of the potential for interference, the Commission, in August 2008, granted Spectrum Five's request¹¹ to impose conditions on EchoStar to ensure that it power down its EchoStar 11 satellite and operate within the parameters set forth in the existing U.S. BSS assignment at 110° W.L.¹² Thereafter, in March 2010, the Bureau authorized the

⁹ See *Petition for Clarification of Condition in EchoStar 11 License*, Order, 23 FCC Rcd 12786 (2008); *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 2311 (2010) (“*EchoStar 14 Grant*”).

¹⁰ *Policy Branch Information; Actions Taken*, Report No. SAT-00495, DA 08-120, IBFS File No. SAT-LOA-20070622-00085 (Jan. 18, 2008). Spectrum Five did not originally participate in the EchoStar 11 proceeding because Spectrum Five assumed the Commission would require completion of coordination and modification of the band plan prior to launch of the EchoStar 11 satellite, consistent with the United States' ITU treaty obligations.

¹¹ Letter from Todd M. Stansbury, Counsel for Spectrum Five, to Marlene H. Dortch, Secretary, FCC, Emergency Request for Clarification of Conditions on the Operation of the EchoStar 11 DBS Satellite at 110° W.L. (Aug. 21, 2008). The letter noted that “the ITU has not yet published the technical characteristics of the EchoStar-11 satellite for which EchoStar seeks to modify the Region 2 Plan.” This information was not received at the ITU until May 15, 2008 (only two months before launch).

¹² *Petition for Clarification of Condition in EchoStar 11 License*, 23 FCC Rcd at 12788. The Commission declined to adopt similar conditions requested by Spectrum Five on EchoStar 14's authorization, stating that while the Commission is committed to its international coordination responsibilities, coordination with other administrations is not a prerequisite to grant of U.S. DBS space station licenses to U.S. operators, particularly for networks that are not

EchoStar 14 satellite at the 118.9° W.L. position. Although that order did not contain a condition similar to the EchoStar 11 condition, the Bureau acknowledged that operation of EchoStar 14 at reduced power may be required to comply with ITU rules.

Meanwhile, in a letter to the ITU dated July 15, 2010, the Netherlands regulatory authority raised serious questions regarding the United States' adherence to the ITU's procedural rules for planned bands.¹³ The Dutch letter was prompted by EchoStar's operation of its higher powered satellites in advance of coordination with the Netherlands' priority ITU satellite network filing and prior to formal modification of the ITU's Region 2 BSS plan pursuant to the procedures set forth in Appendix 30 and Appendix 30A of the ITU Rules. After receiving a response from the ITU and the United States on September 9, 2010,¹⁴ the Netherlands regulatory authority followed up with a letter dated September 22, 2010 disputing the FCC's interpretation of its obligations under ITU rules.¹⁵ Specifically, as shown in the correspondence attached as Exhibit A, the Netherlands assert that the Commission's decision to authorize satellite operations in contravention of the ITU Region 2 BSS plan prior to completion of coordination and modification of the ITU band plan are inconsistent with the United States' treaty obligations under the ITU Radio Regulations and are to the detriment of Spectrum Five's assignment. The Netherlands challenged the notion that EchoStar 14 and 15 can be made operational prior to

yet in operation. *See EchoStar 14 Grant* at 2315-16.

¹³ Letter from M.M. Hoogland, Head of the Networks Department, Radiocommunications Agency Netherlands to Valery Timofeev, Director, Radiocommunication Bureau, ITU, Netherlands Telefax AT-EZ/6432276 (July 15, 2010).

¹⁴ Letter from Yvon Henri, Radiocommunication Bureau, ITU to Radiocommunications Agency Netherlands 30-30A5(SNP)/0.3431/10 (September 9, 2010) (stating that the U.S. network was correctly brought into use, consistent with the notified characteristics).

¹⁵ Letter from B.T. van Duijvenvoorde, Agentschap Telecom to Yvon Henri, Radiocommunication Bureau, ITU (September 22, 2010).

modification of the Region 2 BSS plan by invoking Article 4.4, the operation of a network on a non-harmful interference, no protection from interference basis. In short, the Dutch position is that EchoStar 14 and 15 could not launch and operate until the U.S. secured Dutch consent in the coordination process, which then leads to modification of the plan.

Spectrum Five encountered these obstacles during the worst financial crisis since the Great Depression of the 1930s. Businesses throughout the world faced a financing crisis and many entered into bankruptcy. In particular, credit markets collapsed, presenting unprecedented challenges for financing of an innovative service such as Spectrum Five's "tweener" satellite network.

Despite the above difficulties, Spectrum Five has persevered with its efforts to meet the due diligence requirements specified in the International Bureau's "market access" order. These are the same milestones imposed on the two established U.S. DBS operators by Section 25.148 of the FCC's rules.¹⁶ Spectrum Five satisfied the first milestone by signing a construction contract by November 29, 2007.¹⁷ One year later, Spectrum Five completed critical design review, thus timely satisfying the second due diligence obligation.¹⁸ The remaining specified dates are construction of the first satellite in the system by November 29, 2010 and operation of all satellites in the system by November 29, 2012.

Spectrum Five respectfully requests a declaratory ruling to extend until November 29, 2012 or waive the interim construction milestone associated with its tweener satellite network

¹⁶ 47 C.F.R. § 25.148(b).

¹⁷ Letter from Todd M. Stansbury, Counsel to Spectrum Five LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, File Nos. SAT-LOI-20050312-00062 and SAT-LOI-20050312-00063, Call Signs S2667 and S2668 (filed Nov. 28, 2007).

¹⁸ Letter from Todd M. Stansbury, Counsel to Spectrum Five LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, File Nos. SAT-LOI-20050312-00062 and SAT-LOI-20050312-00063, Call Signs S2667 and S2668 (filed Nov. 25, 2008).

authorization. Spectrum Five’s request satisfies the legal standard for a milestone extension. A serious dispute between the Netherlands and the United States government about whether the FCC properly recognized the rights of the Netherlands and Spectrum Five under international law, together with extensive administrative review – at the instigation of the two incumbent U.S. DBS providers – of Spectrum Five’s authority to access the U.S. marketplace, severely frustrated Spectrum Five’s ability to comply with the completion construction milestone. Moreover, the Commission has previously recognized that nascent satellite technologies often require more time to develop and implement. Despite these challenges, and in face of the worst global economic collapse since the Great Depression, Spectrum Five has proceeded diligently with the development of a first-of-its-kind U.S. “tweener” satellite system based upon technology that has the potential to revolutionize the efficient use of spectrum for direct-to-home services. Finally, an extension or waiver will fulfill the primary policy objective of the milestone rules, which is to promote the prompt introduction of new service to the public. For these reasons, as further explained below, Spectrum Five respectfully requests grant of this petition.

II. LEGAL STANDARD FOR MILESTONE EXTENSION

The Commission considers the “totality of the circumstances” when evaluating DBS due diligence milestone extensions.¹⁹ This analysis includes the following four factors:

- (1) those efforts made and not made;
- (2) the difficulties encountered and those overcome;
- (3) the rights of all parties; and
- (4) the ultimate goal of service to the public.²⁰

¹⁹ *United States Satellite Broadcasting Co., Application for Extension of Time to Construct Direct Broadcast System*, Memorandum Opinion and Order, 7 FCC Rcd 7247, 7252 (Int’l Bur. 1992).

²⁰ *Id.* See also *Tempo Satellite, Inc., Application for Extension of Time to Complete the*

As detailed below, in this case, the “totality of the circumstances” surrounding Spectrum Five’s diligent and ongoing development of a “tweener” satellite system at the 114.5° W.L. orbital location support extending or waiving the interim November 29, 2010 date for completing construction of one satellite. The public interest in obtaining access to additional DBS service from a new entrant, coupled with the technological and international policy challenges presented by development of the first-ever “tweener” system authorized within the core U.S. DBS orbital arc, support extension or waiver of the interim construction milestone so that Spectrum Five may proceed to provide competition in the U.S. DBS market.

III. GRANT OF THIS REQUEST IS SUPPORTED BY INTERNATIONAL POLICY.

Spectrum Five is the first non-U.S. satellite operator authorized to construct, launch, and operate a satellite to provide DBS service in the United States from an orbital location halfway between the two existing U.S. operators. Waiver or extension of Spectrum Five’s interim construction deadline is warranted given the unique and overriding foreign policy dispute between the United States and the Netherlands regarding Spectrum Five’s spectrum rights at the 114.5° W.L. orbital location. As described above, the Netherlands regulatory authority has raised serious questions regarding the United States’ adherence to the ITU’s procedural rules for planned bands. The Netherlands asserts that the Commission’s grants of authority to EchoStar to operate at adjacent orbital locations fail to respect and protect the spectrum rights of the Netherlands at the 114.5° W.L. orbital location.²¹ The Netherlands regulatory authority claims that pursuant to the United States’ treaty obligations under the ITU Radio Regulations, these satellites cannot be authorized to launch and operate in advance of coordination with the

Construction and Operation of a Direct Broadcast Satellite System, Memorandum Opinion and Order, 13 FCC Rcd 11068, 11074 (Int’l Bur. 1998).

²¹ See *supra* note 9.

Netherlands' priority ITU satellite network filing and formal modification of the ITU's Region 2 BSS band plan. The extraordinary uncertainty created by this ongoing dispute has unavoidably delayed Spectrum Five's prosecution of its spectrum rights at the 114.5° W.L. orbital location.

Prior to grant of Spectrum Five's authorization, the Commission was able to coordinate the two incumbent DBS systems domestically without material involvement of another administration. With the grant of rights to provide DBS services in the United States to Spectrum Five, a Netherlands-authorized satellite provider, the United States was required to engage in international coordination prior to modification of the band plan for DBS assignments. In advance of doing so, however, at least one of the incumbent operators has commenced operation of satellites with technical parameters exceeding those allowable under the ITU Region 2 BSS plan, which the Netherlands' government asserts contravenes the ITU's band plan and the U.S. government's treaty obligations.

Since this authorization was granted, Spectrum Five has had to engage in ongoing disputes with incumbent DBS and other satellite providers to protect its internationally-recognized spectrum rights. As noted above, Spectrum Five also has expended necessary time and resources to safeguard its rights in light of the Commission's decision to authorize EchoStar to bring into operation co-frequency, high powered satellites adjacent to 114.5° W.L., which will increase interference to the Spectrum Five network notwithstanding the higher-priority ITU filings made by the Netherlands.²² The ongoing fight to protect these spectrum rights from the incumbent providers, including Spectrum Five's position in the middle of an international policy dispute, has materially frustrated Spectrum Five's ability to complete construction of its satellite, and warrants an extension of the interim complete construction milestone.

²²

Id.

IV. SUBSTANTIAL UNCERTAINTY CREATED BY ADMINISTRATIVE REVIEW OF SPECTRUM FIVE'S AUTHORIZATION JUSTIFIES AN EXTENSION OF THE INTERIM COMPLETE CONSTRUCTION MILESTONE.

In addition to the ongoing foreign policy dispute, Spectrum Five has had to overcome unrelenting efforts from the two incumbent DBS providers to thwart the emergence of a new facilities-based competitor. As described above, EchoStar and DIRECTV opposed Spectrum Five's initial petition for market access and then filed substantial, but ultimately meritless, applications for review of Spectrum Five's authorization, which cast doubt on the right of Spectrum Five to access the U.S. market.²³ The cloud of doubt caused by the incumbents' applications for review persisted at least until the Commission denied the applications in its February 25, 2008 *Memorandum Opinion and Order*, fifteen months after the original issuance of Spectrum Five's authorization to serve the United States market. Of course, Spectrum Five's access to the U.S. market remained in legal limbo until the time for EchoStar and DIRECTV to seek judicial review of the FCC's order finally passed without further challenge. Three months later, the world financial meltdown began.

A dispute regarding spectrum rights between incumbent providers and new entrants is not without precedent. However, in analogous situations, the Commission has extended construction deadlines in response to such disputes. For example, in the terrestrial broadcast context, the Commission's rules require the Media Bureau to toll the period of construction for a new station when the underlying grant is the subject of administrative or judicial review.²⁴ As a matter of

²³ In their applications for review, DIRECTV and EchoStar argued that the International Bureau exceeded its legal authority in authorizing Spectrum Five to serve the United States market from the 114.5° W.L. orbital location, that the Bureau's decision was inconsistent with Commission and Supreme Court precedent, and that the decision was otherwise substantively and procedurally defective. *See supra* note 5.

²⁴ 47 C.F.R. § 73.3598(b)(2). "Administrative or judicial review" is defined for these purposes expressly to include "petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission."

equity, and by analogy to the terrestrial broadcast construction permit context, the International Bureau should similarly toll Spectrum Five's interim construction deadline to accommodate for time lost during the pendency of the applications for review.

V. DEVELOPMENT OF A "TWEENER" SATELLITE IS A NASCENT UNDERTAKING FOR WHICH ADDITIONAL TIME TO COMPLETE CONSTRUCTION OF A DBS SATELLITE IS WARRANTED.

Spectrum Five's innovative "tweener" satellite system has required the company to address unique engineering and coordination challenges, which have appreciably increased the amount of time needed for construction. As explained below, the development of a "tweener" satellite with new technology designed to create DBS capacity from a slot between the two established providers is a difficulty not encountered in the construction of a traditional 9 degree spaced DBS satellite.

Spectrum Five's "tweener" satellite system leverages technological improvements to reduce the spacing required between DBS orbital locations from 9 degrees to 4.5 degrees, thereby radically increasing efficient use of the DBS spectrum. The orbital spacing between DBS satellites serving the same geographic area, combined with the satellite transmit characteristics and earth station antenna performance, determines the amount of interference a DBS system will receive.²⁵ The traditional 9 degree orbital spacing in the DBS service enables subscribers to use earth station antenna receivers that are much smaller than those generally employed for other satellite systems. The original International plan was based upon the assumption that broadcasts would be inefficient and spectrally "dirty" analog transmissions. However, technology overtook this policy decision and the broadcasts were deployed using spectrally "clean" digital transmission. Since the 2002 *Part 100 Order*, the Commission has

²⁵ *Policies and Rules for the Direct Broadcast Satellite Service*, Report and Order, IB Docket No. 98-21, 17 FCC Rcd 11331, 11391 (¶ 129) (2002) ("*Part 100 Order*").

been anticipating the possibility of reduced-spacing operations by non-U.S. DBS satellites.²⁶

In authorizing Spectrum Five to provide DBS service from the 114.5° W.L. “tweener” orbital location, the International Bureau acknowledged the unique technical and coordination challenges facing Spectrum Five. For example, the International Bureau recognized that coordination with incumbent DBS providers could require Spectrum Five’s service to be more tolerant of interference, and to use lower spot beam power levels and increased subscriber antenna sizes.²⁷

In fact, three months prior to the *Spectrum Five Authorization*,²⁸ the Commission launched a rulemaking proceeding to consider the complex and novel technological challenges associated with constructing and coordinating a “tweener” DBS satellite. In the *DBS Notice*, the Commission sought comment on whether new rules should be adopted to govern the technical operations of reduced-spacing DBS satellites and whether special procedures are required to govern coordination between DBS satellite operators under these circumstances.²⁹ This rulemaking remains pending after four years.

Given the complexity of bringing a first-of-its-kind U.S. service from infancy to market, granting Spectrum Five’s request for extension or waiver of an interim milestone would be consistent with precedent. In previous cases, the Commission has determined that additional flexibility for milestones and other deadlines is warranted where the undertaking is particularly

²⁶ *Id.*

²⁷ *Spectrum Five 2006 Authorization*, 21 FCC Rcd at 14036-37 (¶ 29).

²⁸ *See Amendment of the Commission’s Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service; Feasibility of Reduce Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States*, Notice of Proposed Rulemaking, IB Docket No. 06-160, Report No. SPB-196, 21 FCC Rcd 9443 (2006) (“*DBS Notice*”).

²⁹ *Id.*, 21 FCC Rcd at 9457-64.

novel or the market for the technology is just emerging. For example, the Commission granted EarthWatch Incorporated an extension of its deadline to construct and launch two of the satellites in its low-Earth orbiting remote-sensing satellite system.³⁰ In granting EarthWatch's request for extension, the Commission determined that a more lenient approach was warranted in light of the nascent stage of developing technology. Similarly here, additional time is warranted to bring new "tweener" technology to the U.S. DBS market.³¹

Indeed, Spectrum Five's unique challenges associated with developing a "tweener" DBS satellite system are made even more difficult due to the established nature of the 9 degree spaced U.S. DBS market, which is currently dominated by only two providers, by any standard a duopoly, who have operated DBS satellites at adjacent orbital locations for over a decade. Indeed, the only other entity attempting to develop a "tweener" system, EchoStar, is a major DBS operator already. In these circumstances, where a new market entrant is working diligently to bring an innovative technology to market, strict adherence to an interim due diligence date provides little to no public benefit.³² In contrast, permitting Spectrum Five to retain its U.S.

³⁰ *Application of EarthWatch Incorporated For Modification of its Authorization to Construct, Launch and Operate a Remote Sensing Satellite System*, Order and Authorization, 12 FCC Rcd 19556, 19557 (¶ 2) (Int'l Bur. 1997).

³¹ *Id.*, 12 FCC Rcd at 19559 (¶ 10). The Commission's determination in *Advanced Communications Corporation* that latitude in granting milestone extensions was no longer appropriate due to the established nature of DBS service is not determinative here. *Advanced Communications Corp., Application for Extension of Time to Construct, Launch, and Operate a Direct Broadcast Satellite*, Memorandum Opinion and Order, 10 FCC Rcd 13337, 13338 (Int. Bur. 1995). Given that a "tweener" satellite has never operated between two incumbent services, and will require new and untested technology, this request for milestone extension is more analogous to the "pioneering era" of DBS technology when the Commission granted milestone extensions with acknowledgement that new technological advances could not be expected to be deployed "in accord with a pre-established timetable set without the benefit of experience." *United States Satellite Broadcasting Company, Inc.*, 3 FCC Rcd 6858, 6860 (1988).

³² Notably, despite the technical and coordination challenges involved, the Commission only afforded Spectrum Five four years to complete construction of the first ever DBS tweener satellite. *Spectrum Five Authorization*, 21 FCC Rcd at 14043 (¶ 45). In contrast, the FCC affords routine GSO FSS licensees five years in which to launch and operate. 47 C.F.R. §

market access authorization while it completes construction of its “tweener” DBS system will ultimately benefit consumers with increased DBS competition, as envisioned by the Commission.³³

VI. GRANTING AN EXTENSION WOULD NOT UNDERMINE THE PURPOSE OF THE FCC’S MILESTONE POLICY BECAUSE THE DBS APPLICATION FREEZE PREVENTS FCC REASSIGNMENT OF SPECTRUM FIVE’S U.S. DBS RIGHTS.

The Commission’s due diligence rules are designed to ensure that valuable spectrum is not warehoused and that service is timely deployed for the benefit of the public.³⁴ Therefore, in evaluating whether extension of a milestone is warranted the Commission considers whether the orbital location at issue could be better utilized by other providers, or whether a different satellite operator could more quickly provide service to the public.³⁵ In this case, the answer to both of those questions is “no.”

On December 21, 2005 the FCC imposed a freeze on all new DBS applications. This freeze “applies to any application for authority to provide DBS service to the United States using the 12.2-12.7 GHz band and associated feeder links in the 17.3- 17.8 GHz band,” including

25.164(a)(4).

³³ See *supra* note 4.

³⁴ *Policies and Rules for the Direct Broadcast Satellite Service*, Report and Order, 17 FCC Rcd 11331 (¶ 42) (2002); R/L DBS Company, LLC for Extension of its Direct Broadcast Satellite Construction Permit, *Memorandum Opinion and Order*, 16 FCC Rcd 9, 12-13 (Int’l Bur. 2000) (noting that “strict enforcement of our DBS milestones further the very important spectrum management goal of ensuring that valuable spectrum resources are efficiently put to use”).

³⁵ See *United States Satellite Broadcasting Co., Application for Extension to Time to Construct Direct Broadcast System*, Memorandum Opinion and Order, 3 FCC Rcd 6858, ¶ 14 (1988) (finding that “it would be very short-sighted to eliminate the very parties whose efforts to date, even if not in accord with a pre-established timetable set without the benefit of experience, now would appear to have brought them closer to the threshold of providing experience than any non-permittee.”).

“requests for market access by foreign-licensed space stations.”³⁶ Because of this freeze, the Commission is precluded from processing any new DBS satellite applications or any major modifications, including relocation to a new orbital location. No other operator, including new or established DBS providers, can apply for U.S. rights to provide DBS service from the 114.5° W.L. orbital location. Consequently, the Commission has no means of reassigning the 114.5° W.L. orbital location to another licensee for the provision of DBS services to the public.³⁷ Because of the freeze, no other satellite operator can provide DBS services from this orbital location any sooner, and the U.S. has not made any international claim to 114.5° W.L. and the frequencies associated with it. Moreover, under the ITU’s procedures, Spectrum Five has until 2013 to bring its Dutch-authorized service into use. In short, grant of Spectrum Five’s milestone extension request is the best means available to bring promptly much-needed competition to the U.S. DBS market from a new entrant operating from a new orbital location.³⁸

³⁶ *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*, Public Notice, FCC 05-213 at 2 (Dec. 21, 2005).

³⁷ As a result of the freeze, strict adherence to the FCC’s milestone policy would also impose a greater hardship on Spectrum Five than similarly-situated licensees who are not precluded from reapplying for a new license. *See, e.g.*, National Exchange Satellite, Inc. Request for Extension of Time to Construct and Launch Space Stations In The Domestic Fixed Satellite Service, File No. 4/5-DSS-EXT-90, *Memorandum Opinion and Order*, 7 FCC Rcd 1990, ¶ 17 (CC 1992); National Exchange Satellite, Inc., Application for Review of Order Denying Extension of Time to Construct and Launch Space Stations in the Domestic Fixed-Satellite Service, File No. 4/5-DSS-EXT-90, *Memorandum Opinion and Order*, 8 FCC Rcd 636, ¶ 9 (1993); Final Analysis Communication Service, Inc., Authorization to Construct, Launch and Operate a Non-Voice, Non-Geostationary Mobile Satellite System in the 148-150.5 MHz, 400.15-401 MHz, and 137-138 MHz Bands, 25-SAT-P/LA-95, *Memorandum Opinion and Order*, 19 FCC Rcd 4768, 4786 ¶ 47 (IB 2004); Astrovision International, Inc., Application to Modify Authorization to Launch and Operate a Remote Sensing Satellite System to Extend Milestones, File No. SAT-MOD-20030528-00094, *Order*, 22 FCC Rcd 2379, 2383 ¶ 14 (IB 2007).

³⁸ *See supra* note 35.

VII. CONCLUSION

For the foregoing reasons, Spectrum Five respectfully requests that the Commission promptly approve this petition for extension of Spectrum Five's interim construction milestone.

Respectfully submitted,
Spectrum Five LLC

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

Dated: November 26, 2010

EXHIBIT A



**SATELLITE DIVISION
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- Satellite Division:** Robert Nelson, Chief; Cassandra Thomas, Deputy Chief;
Fern Jarminec, Deputy Chief
- Policy Branch:** Stephen Duall, Chief
- Engineering Branch:** Kathryn Medley, Chief
- Systems Analysis Branch:**



FEDERAL COMMUNICATIONS COMMISSION
INTERNATIONAL BUREAU
WASHINGTON, D.C. 20554



Fax: +1 202 418 1208; TWX: 710 922 0160
e-mail: IBMAIL@FCC.GOV

June 21, 2010

IN REPLY REFER TO:
800C2/SEB10246

Mr. J.G. Kroon,
Radiocommunications Agency Netherlands
Emmasingel 1
Po Box 450
9700 AL Groningen
THE NETHERLANDS
(fax: +31 50 587 74 00)

Subject: Coordination issues relating to the proposed modification of the Region 2 BSS Plan in the geostationary arc between 114.5° WL and 119° WL.

References:

- 1) Letter from Mr. Hoogland, Netherlands Administration, AT-EZ/6349420/SNE, dated December 10, 2009
- 2) Letter from Mr. Hoogland, Netherlands Administration, AT-EZ/6400291/SNE, dated March 18, 2010
- 3) Our letter to the BR in response to Mr. Hoogland's letter, 800C2/SEB10201, dated June 9, 2010

Dear Mr. Kroon,

We have received the above-referenced letters regarding broadcasting-satellite service (BSS) coordination between our administrations. Your letters focus on the Region 2 BSS plan orbital assignments near the 114.5° and 119 ° WL orbital locations.

We note that the US administration has licensed and coordinated many networks to operate from the Region 2 BSS Plan nominal 110° and 119° WL orbital locations. These satellites have been operational from both locations since approximately 1996, in accordance with network parameters found in the Master International Frequency Register and in International Telecommunications Union filings. The Netherlands networks SF_BSS5 and BSSNET114.5W affect these networks and will need to seek agreement from the US as well. To date, the US administration has not received any proposals from the Administration of the Netherlands concerning these networks in order to start the process toward seeking agreement for the Netherlands networks with the affected networks of the United States having an earlier ITU date of receipt. Your letter to the BR (Ref. 2) indicates that there have been repeated attempts to contact the Administration of the United States on these matters. We

are aware of only one letter to this Administration from the Administration of the Netherlands (included as an attachment to ref. 1 above) concerning this subject. In addition, we are aware of only one attempt by the operator of the SF_BSS5 and BSSNET114.5W networks to contact one of our operators. The letter from your operator to our operator was sent to the wrong person at the wrong address in a very large organization. Presumably, this was also the case with your operator's other attempts to contact that operator. Further, there is another US BSS operator whose networks are affected by your SF_BSS5 and BSSNET114.5W Region 2 BSS plan modification filings. There seems to have been no contact or discussion with this operator, either.

You request that we require our applicant to Appendix 30 of the ITU regulations provides the international guidelines for the agreement seeking process when an administration proposes a modification of the Region 2 BSS Plan. Your letter seems to indicate that the Appendix 30 rules require the agreement of all administrations deemed affected by the ITU prior to the launch and bringing into use of a satellite network. We disagree with your interpretation of the requirements in Appendix 30. This administration believes that Appendix 30 of the Radio Regulations does not preclude the launch and operation of a satellite at a Planned location in the absence of an agreement, provided that there will be no interference to other operational networks. This is a common practice among most administrations to permit satellite operators to begin the utilization of an expensive piece of capital hardware while agreements are being concluded. Our licensees are aware that upon launch and operation of any satellite network with an earlier ITU date of receipt and with whom this administration does not have a coordination agreement, our licensees are obliged to correct any harmful interference that may occur. However, in this instance, the satellite associated with the SF_BSS5 and BSSNET114.5W networks has not yet been launched. Therefore, there can be no harmful interference to these networks.

Lastly, your December, 2009 letter indicates that the Netherlands has not received notification from the ITU that the US needs to coordinate the USABSS-31 network. The USABSS-31 filing was received by the BR on August 25, 2009 and was published by the ITU in IFIC 2659 dated December 15, 2009. Therefore, we believe that the Netherlands has had the opportunity to formally provide its comments under the existing agreement seeking process.

The US administration is of the view that coordination of our respective networks is required and should be initiated quickly. The US administration believes that the operators of the operational and proposed BSS networks are best suited to address the outstanding issues of the agreement seeking process and therefore proposes operator-to-operator discussions to address the any potential interference issues. The respective Administrations have in the past authorized operator-to-operator discussions and propose them here as well to address any potential interference issues. We continue to believe that this is the best and most time-efficient way forward to resolve this issue. If this is acceptable to you, please provide the contact information from your operator. The contact information for our affected operators is:

DirectTV: David Pattillo

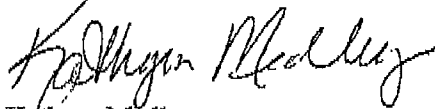
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EchoStar: David Bair

Senior Vice President, Space Programs and Operations
EchoStar Corporation / EchoStar Satellite Services L.L.C.
100 Inverness Terrace East
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USA
Phone: 303-706-5117
E-mail: david.bair@echostar.com

If you have any questions, please contact me via phone at +1 (202) 418-1211 or via e-mail at Kathryn.Medley@fcc.gov.

Sincerely,



Kathryn Medley
Chief, Satellite Engineering Branch
Satellite Division

cc: Mr. Robert G. Nelson, Chief, Satellite Division, International Bureau, Federal Communications Commission

Mr. M.M. Hoogland, Head of the Networks Department
Radiocommunications Agency Netherlands

Attachment

If replying by fax, reply to 1 202 418 1208 (preferred) or 1 202 418 0398 (alternate)



FEDERAL COMMUNICATIONS COMMISSION
INTERNATIONAL BUREAU
WASHINGTON, D.C. 20554



fax: +1 202 418 1208; TWX: 710 822 0160
e-mail: IBMAIL@FCC.GOV

June 8, 2010

IN REPLY REFER TO:
800C2/SEB10201

The Director
Radiocommunication Bureau
International Telecommunication Union
Place des Nations
CH-1211 Geneva 20
Switzerland

Subject: Coordination issues relating to the proposed
modification of the Region 2 BSS Plan in the geostationary
arc between 114.5 ° WL and 119° WL.

Reference: Letter from Mr. Hoogland, Netherlands
Administration, AT-EZ/6400291/SNE, dated March 18, 2010

Dear Sir:

We have received a courtesy copy of a letter from Mr. Hoogland of the Netherlands to you concerning the proposed modification of the Region 2 BSS Plan in the geostationary arc between 114.5 ° WL and 119° WL.

Mr. Hoogland indicates that there have been repeated attempts to contact the Administration of the United States on these matters. We are aware of only one letter from the Administration of the Netherlands (included as an attachment to ref. 1 above) concerning this subject.

We disagree with the Netherlands' interpretation of the requirements in Appendix 30. This administration believes that Appendix 30 of the Radio Regulations does not preclude the launch and operation of a satellite at a Planned location in the absence of an agreement, provided that there will be no interference to other operational networks. Further, we note that our licensees are aware that upon launch and operation of an affected satellite network with an earlier ITU date of receipt and with whom this administration does not have an agreement, they are obliged to correct any harmful interference that may occur. However, in this instance, the satellite associated with the SF_BSS5 and BSSNET114.5W networks has

not yet been launched. Therefore, there can be no harmful interference to these networks.

In addition, the US administration has licensed and coordinated many networks to operate from the Region 2 BSS Plan nominal 110 and 119 WL orbital locations. These satellites have been operational from both locations since approximately 1996, in accordance with network parameters found in the Master International Frequency Register and in International Telecommunications Union filings. The Netherlands networks SF_BSS5 and BSSNET114.5W affect these networks and will need to seek agreement from the US as well. To date, the US administration has not received any proposals from the Administration of the Netherlands concerning these networks in order to start the process toward seeking agreement for the Netherlands networks with the affected networks of the United States having an earlier ITU date of receipt.

Therefore, the US administration is of the view that the agreement seeking process of the respective networks should be initiated quickly. The US administration believes that the operators of the operational and proposed BSS networks are best suited to address the outstanding issues of the agreement seeking process. The respective Administrations have in the past authorized operator-to-operator discussions and propose them here as well to address any potential interference issues. We continue to believe that this is the best and most time-efficient way forward to resolve this issue.

We plan to work with the Administration of the Netherlands to resolve this issue.

Sincerely,



Robert G. Nelson
Chief, Satellite Division
FCC/IB

If replying by fax, reply to 1 202 418 1208 (preferred) or 1 202 418 0398 (alternate)

To
Valery Timofeev, Director
Radiocommunication Bureau, ITU
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agentschaptelecom@at-ez.nl

Id-number	:		File number	:	-
Contact	:	Mr. Johan Kroon	Date	:	15 July 2010
Telephone	:	+31 50 5877 344	Your reference	:	30-30A4(SNP)/0.1725/10
Our reference	:	AT-EZ/6432257	Number of pages	:	1 of 5
Enclosure(s)	:	3			
Subject	:	SF_BSS5 network at 114.5° W.L.			

Dear Mr. Timofeev,

This letter is submitted in furtherance of the request our Administration made on 18 March 2010 pursuant to No. 4.2.22 of Appendix 30 and No. 4.2.22 of Appendix 30A of the Radio Regulations. In its earlier correspondence, the Netherlands Administration requested the assistance of the Radiocommunication Bureau in connection with a situation that has developed concerning proposed modifications to the Appendices 30 and 30A Region 2 BSS and BSS Feeder Link Plans from the United States of America, and the impact the U.S. actions are having on the ability of the Netherlands Administration to successfully complete its obligation to seek agreement from the United States for the 2005 Plan Modification request for our SF_BSS5 network at 114.5° W.L.

The Netherlands Administration recognizes and accepts its obligations regarding agreement from the U.S. for plan entries and modification requests that predate the SF_BSS5 network, and reported to you our operator's difficulties in trying to fulfil this obligation. The facts that prompted this Administration to seek the assistance of the Radiocommunication Bureau concern two newer BSS networks of the United States of America that you report have not been notified as having been brought into use – USABSS-30 at 110° W.L. and USABSS-31 at 119° W.L. These new U.S. networks were first filed in 2008 and 2009 and thus are behind our SF_BSS5 network. Our understanding from participation by the operator we have designated for the SF_BSS5 network in the U.S. domestic authorization process for the two U.S. networks in question is that USABSS-30 and USABSS-31 are not mere replacements of the prior U.S. BSS networks at the 110° W.L. and 119° W.L. locations that are deemed affected by SF_BSS5; they are higher-power/greater coverage spacecraft than the spacecraft they replace, and thus required modifications to the Region 2 BSS Plans in Appendices 30 and 30A before being brought into use.

There is no question that the USABSS-30 and USABSS-31 frequency assignments are operational. The U.S. operator notified the U.S. FCC that the USABSS-30 satellite (EchoStar 11) commenced "regular operation" at the 110.0° W.L. orbital location on August 27, 2008 (see Attachment 1 to this letter), and that the USABSS-31 satellite (EchoStar 14) "became fully operational at 118.9° W.L. on May 27, 2010" (see Attachment 2 to this letter). Despite the fact that USABSS-30 has been in regular operation for nearly two years, it is our understanding that no notification of the bringing into use of the frequency assignments for the new network has been provided to the Bureau under Article 5 of Appendices 30 and 30A. The same is true, apparently, for the newly-operational USABSS-31 network's frequency assignments.

There are two possible scenarios here. First, the two new U.S. BSS networks could be true replacements for the prior U.S. BSS networks operated by the same operator at the 110.0° W.L. and 119° W.L. locations, and are operating within the current Region 2 BSS Plan entries associated with the earlier networks (specifically,

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with USABSS-15 at 110.0° W.L. and with USABSS-14 at 119° W.L.). This would mean that upon commencement of regular operation of the new satellites, the use of the frequency assignments by their respective predecessor satellites was ceased, and there is no at-variance operation from the existing assignments. Second, the two new U.S. BSS networks are not true replacements, and are operating outside the Region 2 BSS Plan parameters and therefore require a modification of the Region 2 BSS Plans in Appendices 30 and 30A.

The Netherlands Administration understands that principles of international comity and presumptions of good faith due all Member States create a rebuttable presumption in the Bureau's view that the absence of notification filings for the clearly operational USABSS-30 and USABSS-31 satellite networks signifies that the first scenario is the correct scenario. In such a case, the failure of the U.S. Administration to provide the notification of bringing into use, while still a violation of the Radio Regulations, would have no operational significance for the Plans or this Administration's 2005 filing for SF_BSS5 at 114.5° W.L. In other words, our obligation under Article 4 of the Plans to secure agreements with respect to earlier U.S. entries and proposed modifications to the Plans would be unaffected by the replacement of older spacecraft with operationally identical new spacecraft.

Regrettably, the facts as we understand them – starting with the fact that both USABSS-30 and USABSS-31 were filed as modifications to the Region 2 Plans – combine to clearly point to the second scenario as the correct scenario. The idea that the new satellites can be operated in accord with the earlier Plan modifications is not correct. As we indicated in our 18 March correspondence, each of the new satellites has higher power, more spot beams, and broader coverage than the satellites they are replacing, and there is no question that the OEPM changes for each of the new U.S. networks individually will substantially exceed – by as much as several orders of magnitude – the 0.25 dB trigger level specified in Annex 1 to Appendix 30.

In its domestic application for the EchoStar 11 satellite (USABSS-30), the operator stated that, "[t]he EchoStar 11 satellite ... will update, improve, and increase the power of EchoStar's full-CONUS service from 110° W.L., resulting in consumers receiving the programming they demand while preserving the quality of reception to which they have been accustomed." Application of EchoStar Satellite Operating Company to the FCC, at 2 (FCC File No. SAT-LOA-20070622-00085). The operator goes on to note that "EchoStar 11 will improve CONUS service at 110° W.L. by using higher power operations at the slot than are possible using the CONUS capabilities of the EchoStar 8 satellite, which is currently providing CONUS service at 110° W.L.," and that "additional power is necessary to respond to consumer demand and competitive pressures without sacrificing reception quality." Application at 3, 4. "CONUS" is an acronym for continental United States. In its domestic authorization orders for EchoStar 11, the FCC recognized that the satellite, as designed, has a higher potential for interference than the satellite it was replacing. See *Petition of Spectrum Five, LLC for Clarification of Condition in EchoStar 11 License*, DA 08-1955, at ¶ 8 (U.S. FCC Intl Bur., released 26 August 2008) (Attachment 3 to this letter).

The operator of USABSS-31 made similar representations regarding increases in power in its domestic U.S. application for the EchoStar 14 satellite at 119° W.L. In the Application of DISH Operating Corporation, LLC to the FCC, at 2, 3 (FCC File No. SAT-LOA-20090518-00053), the operator referred to "higher-power satellites, such as EchoStar 14," and emphasized how the satellite could produce 51 spot beams as compared with the EchoStar 7 satellite's 15 spot beams from the same location. In a press briefing immediately after the March 2010 launch of EchoStar 14, the president of EchoStar Satellite Services was quoted in an industry publication as representing that EchoStar 14 will double the communications power of

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earlier EchoStar satellites" See "Proton Rocket Launches New DISH Network Satellite," SPACE.com (22 March 2010) (<http://www.space.com/missionlaunches/proton-dish-satellite-launch-sfn-100322.html> – last visited 12 July 2010). In its domestic authorization order for EchoStar 14, the FCC expressly noted that it was allowing the operator to exceed levels in the Region 2 BSS and BSS Feeder Link Plans, and that it was doing so without requiring the operator to secure agreement with our operator of the earlier-filed SF_BSS5 network. *DISH Operating L.L.C.*, DA 10-407, at ¶¶ 7, 10-11 (U.S. FCC Int'l Bur., released 10 March 2010).

Analysis by our designated operator for SF_BSS5 confirms that the USABSS-30/EchoStar 11 satellite and USABSS-31/EchoStar 14 satellite have significantly greater interference potential than the USABSS-14 and USABSS-14 satellites they replaced (or in the case of USABSS-31, at least partially replaced). The USABSS-15/EchoStar 8 satellite was designed to provide up to 32 CONUS transponders with 120 Watt TWTs, or operate in a high-power mode with 16 transponders active at 240 Watt TWTs. The spot beam coverage of USABSS-15 is only for limited areas of the United States, and for limited transponder frequencies that can interfere with SF_BSS5 4.5 degrees to the west. By contrast, the high-power CONUS beams of USABSS-30 create interference across the entire CONUS area to all 19 affected transponders of the SF_BSS5 satellite. We note further that the peak EIRP of the USABSS-15 satellite applies only to the highest-power beam; the satellite had much lower power beams on the U.S. west coast. Because USABSS-30 operates totally in the "CONUS" mode at a much higher power than the satellite it replaced, the result is that the USABSS-30 satellite will create much more interference to SF_BSS5 compared to the combined spot beam/CONUS operation of USABSS-15. The situation between USABSS-31 and USABSS-14 is similar, in that when the new satellite is operated in its "all-CONUS" mode, interference at a higher level is produced in areas of the United States where operation of the same transponders with their limited geographic coverage produced no or lower-power interference. Not only does the higher-power of the new satellite create significantly more interference to SF_BSS5 than the combined spot-beam/CONUS operation of USABSS-14, there is no way that the operator can restrict interference from USABSS-31 to USABSS-14 levels without turning many transponders completely off.

We are hesitant to burden the BR with a highly-detailed analysis at this juncture, but please be advised that this Administration and our designated operator for SF_BSS5 are prepared to provide whatever level of detail the BR may need or desire to help address the concerns we have. The situation from this pair of later-in-time "replacement" satellites from the U.S. is very serious in terms of impact on SF_BSS5's plans for the 114.5° W.L.

The Radio Regulations are very clear on the ability of an administration to bring into use a modification to the Region 2 BSS and BSS Feeder Link Plans for which agreement has not been secured from all affected administrations. Section 4.2.1 of Appendix 30 specifies that the procedure of Article 4 "shall" be applied before any notification filing is to be made to the BR. Section 4.2.14 addresses the publication of the list of administrations "whose agreements are required for completion of the Article 4 procedure." This is a very important provision. It means that where an administration needs to seek agreement to effect a Plan modification, achievement of that agreement is required to complete the Article 4 procedure, and the Article 4 procedure must be completed before notification. Thus, notification and bringing into use under Article 5 of Appendix 30 cannot occur until agreement is reached with affected administrations.

In its above-referenced correspondence, the U.S. FCC disagrees with the proposition that Appendix 30 rules required agreement prior to the launch and bringing into use of a satellite network. U.S. FCC Telefax 800C2/SEB10201, at 2. We maintain that the U.S. FCC is not correct in its reading of the Radio

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Regulations, and the effects of its reading on the orderly administration of the Plans in Appendices 30 and 30A is very significant in cases such as this where agreement would be made more difficult to reach due to the increased power, greater coverage, and closer proximity to our SF_BSS5 network (by .1 degree of longitude for USABSS-31) of the proposed plan modifications.

With respect to the obligations the Netherlands Administration has to secure agreement with the earlier-in-time plan modification filings made for USABSS-15 and USABSS-14, it is very important to know:

- i) whether the networks remain in place or have been supplanted by the new USABSS-30 and USABSS-31 networks now operating at the nominal locations on the same channels;
- ii) whether the new USABSS-30 and USABSS-31, despite having very different parameters in terms of power and spot-beam coverage than the networks they were to have replaced, are being operated within all of the parameters of the relevant U.S. plan modification filings that predate this Administration's filings for plan modifications at 114.5° W.L.;
- iii) whether a network under the Region 2 BSS and BSS Feeder Link Plans that has not completed the Article 4 procedure may bring its frequency assignments into use, and what status, if any, those assignments have; and
- iv) whether frequency assignments that exceed the Region 2 BSS and BSS Feeder Link Plan parameters that are brought into use prior to any agreement being achieved with affected Administrations can have any standing at all under the Radio Regulations.

Together, the two new U.S. networks will have significant negative interference effects on the Netherlands Administration's SF_BSS5 network that they surround at 114.5° W.L. As we suspected in our initial 18 March 2010 correspondence, and as emerging fact seem increasingly to confirm, the United States of America has failed to follow the mandate of Article 3 and the procedures of Articles 4 and 5 of Appendices 30 and 30A with respect to the USABSS-30 and USABSS-31 networks. Initial information on the U.S. networks was not first submitted at least two years prior to the dates on which they were or are to be brought into use; notices under No. 5.1.1 of Appendix 30 and the corresponding provision of Appendix 30A were either not filed or not timely filed; and the United States has made no effort (in fact the U.S. FCC claims no prior obligation) to secure agreement from the Netherlands Administration or the operator of the SF_BSS5 network with respect to the U.S.'s proposed plan modifications at the orbital locations immediately to the east and to the west of SF_BSS5.

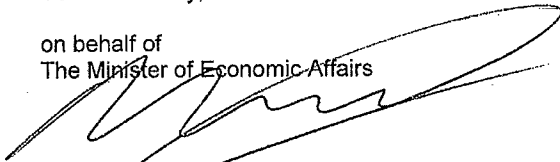
We continue to seek assurance that all measures required to protect the rights the Netherlands Administration secured by filing the SF_BSS5 modification in 2005 will in fact be taken, notwithstanding the bringing into use of uncoordinated BSS networks. We also seek confirmation of our understanding that any operation by the USABSS-30 and USABSS-31 networks that is both uncoordinated with SF_BSS5 and outside the parameters of the U.S. entries for 110° W.L. and at 119° W.L. in the Region 2 BSS and BSS Feeder Link Plans is considered to have no priority and operate at their own peril with no protection.

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Date : 15 July 2010
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Please let us know whether you require any additional information from our Administration regarding the situation we have described. In this matter you can contact Mr. Johan Kroon of the Netherlands Radio Communication Agency, Tel +31 50 5877 344 and E-mail: johan.kroon@at-ez.nl.

Yours sincerely,

on behalf of
The Minister of Economic Affairs



ir. M.M. Hooiland MBA
Head of the Networks Department
Radiocommunications Agency Netherlands

Attachments (2)

With copy (with attachments) to:

R. David Wilson, CEO Spectrum Five LLC



STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW

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FILED/ACCEPTED

SEP 17 2008

Federal Communications Commission
Office of the Secretary

September 17, 2008

Via HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: **EchoStar Satellite Operating L.L.C.**
File No. SAT-LOA-20070622-00085; Call Sign S2738

Dear Ms. Dortch,

EchoStar Satellite Operating L.L.C., by its attorneys, is pleased to certify that the EchoStar 11 satellite commenced regular operations from its licensed orbital location at 110.0° W.L. on August 27, 2008.

Yours sincerely,


Chung Hsiang Mah
Counsel for EchoStar Satellite Operating L.L.C.

cc:
Andrea Kelly, International Bureau
Jay Whaley, International Bureau

STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW



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June 3, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: **DISH Operating L.L.C.**
File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064, SAT-MOD-20100212-
00027; Call Sign: S2790

Dear Ms. Dortch:

On behalf of DISH Operating L.L.C. (“DISH”), this letter notifies the Commission pursuant to condition “c” of the above referenced applications¹ that EchoStar 14 became fully operational at 118.9° W.L. on May 27, 2010. DISH will continue to operate the satellite pursuant to the above referenced authorization and attendant conditions.

Yours sincerely,

/s/
Petra Vorwig
Counsel for DISH Operating L.L.C.

¹ See *In re 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*, 25 FCC Rcd 2311, ¶ 15(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Spectrum Five, LLC)
)
Petition for Clarification of Condition)
in EchoStar 11 License)

ORDER

Adopted: August 26, 2008

Released: August 26, 2008

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant a request filed by Spectrum Five, LLC (Spectrum Five) to the extent that we are adding an additional term or condition for the operation of the EchoStar 11 satellite, pursuant to an existing condition of the EchoStar 11 satellite license held by EchoStar Satellite Operating Corporation (EchoStar)¹ As discussed below, we have determined that this new term or condition is necessary in order to effectuate the coordination and/or agreements required by EchoStar's authorization.

II. BACKGROUND

2. Spectrum Five is a Direct Broadcast Satellite (DBS) operator licensed by the Netherlands. On behalf of Spectrum Five, the Netherlands filed documentation for two satellites at the 114.5° W.L. orbit location with the International Telecommunication Union (ITU) on March 29, 2005. In 2006, Spectrum Five was permitted to enter the U.S. market for DBS services using those two satellites at 114.5° W.L., between neighboring DBS satellites at 110° W.L. and 119° W.L.²

3. In January 2008, EchoStar was granted authority to launch and operate EchoStar 11, a DBS satellite at the 110° W.L. orbit location.³ Subsequently, on May 15, 2008, the United States made a filing with the ITU for EchoStar 11 (USABSS-30). Spectrum Five notes, however, that

¹ See Policy Branch Information, *Public Notice*, DA 08-120 (released Jan. 18, 2008).

² 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*, 21 FCC Rcd 14023, 14043 (para. 43) (Int'l. Bur., 2006)(*Spectrum Five Order*). One of the satellites at the 110° W.L. location at that time was the EchoStar 8 satellite, which has ITU date priority over the Spectrum Five satellites. Spectrum Five's access to the U.S. market was conditioned on Spectrum Five completing coordination with its neighboring satellite operators.

³ See Policy Branch Information, *Public Notice*, DA 08-120 (released Jan. 18, 2008).

the ITU has not yet published the documentation for the EchoStar 11 satellite.⁴ One of the conditions placed on the EchoStar 11 authorization reads as follows:

EchoStar shall provide the Commission with all information it requires in order to modify the Appendix 30 BSS Plan and associated Appendix 30A feeder-link Plan to incorporate the characteristics of the BSS space station of the EchoStar 11 satellite, USABSS-30, in accordance with the ITU Radio Regulations. EchoStar shall be held responsible for all cost recovery fees associated with these ITU filings. We also note that no protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed, or, with respect to individual administrations, coordination agreements are successfully completed. Any radio station authorization for which coordination has not been completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations.⁵

4. On August 8, 2008, Spectrum Five filed a petition for clarification regarding the conditions in the EchoStar 11 license. Specifically, according to Spectrum Five, under the condition quoted above, "the Commission should not permit EchoStar to exceed the parameters specified in the current U.S. assignment in the Region 2 BSS Plan⁶ and associated Feeder Link Plan at 110° W.L. unless and until EchoStar (1) fulfills its obligation to secure the agreement of the Netherlands, or (2) provides explicit technical information to demonstrate that such coordination can be effected."⁷

5. Spectrum Five explains that the EchoStar 11 satellite is a replacement for the EchoStar 8 satellite at 110° W.L.⁸ Spectrum Five further notes that the EchoStar 11 satellite is designed to operate at higher power levels than the EchoStar 8 satellite that it is replacing.⁹ Spectrum 5 argues that the EchoStar 11 satellite deviates from the Region 2 BSS Plan, and that "EchoStar grossly underestimates the degree to which EchoStar 11 will increase interference to the Spectrum Five network."¹⁰

⁴ Letter from Todd M. Stansbury, Counsel for Spectrum Five, to Marlene H. Dortch, Secretary, FCC (dated Aug. 21, 2008) (*Spectrum Five Letter*) at 1.

⁵ See EchoStar 11 License, Call Sign S2738.

⁶ The current U.S. assignment in the Region 2 BSS Plan for 110° W.L. is EchoStar 6. However, in an *ex parte* statement filed on August 21, 2008, Spectrum Five states that the EchoStar 11 satellite should not be operated at power levels above those of EchoStar 8, prior to coordination or provision of technical information to demonstrate that such coordination can be effected. *Spectrum Five Letter* at 1-2.

⁷ Spectrum Five Petition at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2-3.

6. Spectrum Five seeks to ensure that its ITU priority rights can be effectively enforced by the Commission notwithstanding the anticipated future service disruptions to EchoStar's subscribers if EchoStar 11 commences service at 110° W.L. prior to completion of coordination with Spectrum Five.¹¹ Spectrum Five further asserts that EchoStar has not attempted to coordinate the EchoStar 11 satellite with Spectrum Five's planned satellite at 114.5° W.L.,¹² even though Spectrum Five has attempted to contact EchoStar to coordinate.¹³ Therefore, Spectrum Five "urges the Commission to clarify the conditions in EchoStar 11's authorization to prohibit operation of the satellite outside the parameters set forth in the existing U.S. BSS assignment at 110° W.L. until such time as EchoStar can complete coordination or demonstrate that coordination is feasible."¹⁴ Therefore, Spectrum Five maintains that the clarification it seeks would serve the public interest by preventing harmful interference to its higher priority satellites, and by eliminating the risk of significant consumer confusion and harm.¹⁵

7. On August 18, 2008, EchoStar filed an opposition to Spectrum Five's petition, claiming that the petition was not timely filed. EchoStar contends further that it cannot coordinate EchoStar 11 with Spectrum Five's satellites until those satellites are coordinated with EchoStar 8, because that coordination will require Spectrum Five to redesign its satellites. Finally, according to EchoStar, it is unreasonable to require EchoStar 11 to reduce its power before the Spectrum Five satellites are launched.

III. DISCUSSION

8. Pursuant to the EchoStar 11 license condition quoted above, EchoStar "may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations." We find here that an additional term of operation, whereby EchoStar would be required to tailor its EchoStar 11 operations to avoid interference to any operational system that has a higher ITU priority than the priorities obtained by EchoStar, is a necessary part of a successful coordination, given that EchoStar interference with an operational Spectrum 5 network having higher ITU priority would inevitably impair coordination negotiations.¹⁶ To this end, we hereby impose the following requirement on EchoStar's operation of the EchoStar 11 satellite (whose ITU filing is USABSS-30):

If coordination for EchoStar 11 has not been completed and/or necessary agreements under Appendices 30 and 30A have not been obtained with a satellite network having ITU date of receipt priority, and if a satellite network with superior ITU date of receipt priority is brought into use at its assigned location and receives harmful interference, then

¹¹ *Spectrum Five Letter* at 1.

¹² *Spectrum Five Petition* at 4-5.

¹³ *Spectrum Five Letter*, Attachment.

¹⁴ *Spectrum Five Petition* at 5.

¹⁵ *Spectrum Five Petition* at 5.

¹⁶ Spectrum Five styles its request as an "Emergency Request for Clarification of Conditions on the Operation of the EchoStar 11 DBS satellite at 110° W.L." Petitions for clarification are governed by Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2. Section 1.2 does not include any provisions regarding deadlines for filing a petition for clarification. For this reason, we do not agree with Echostar that we should reject Spectrum Five's request as being untimely filed.

EchoStar 11 must modify its operations to not exceed the technical specifications of the nominal 110° W.L. location in the Region 2 BSS plan, as such specifications would be modified by the pending EchoStar 8 plan modification proposal (to the extent the EchoStar 8 proposal has ITU date of receipt priority with respect to the satellite network brought into use).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that the request of Spectrum Five, LLC, IS GRANTED to the extent indicated above and otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Helen Domenici
Helen Domenici
Chief, International Bureau *by RP*

23. JUL. 2010 9:31

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Page 1/

Ref: 30-30A5(SNP)/0.2846/10

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Cc: Radiocommunications Agency Netherlands
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Netherlands
Fax:

Fax: +31 50 5877400

From: Y. Henri, Chief SSD

For your reply:

E-Mail: mitsuhiro.sakamoto@itu.int

Fax: +41 22 730 5785 Tel: +41 22 730 5371

Subject: Bringing into use the **USABSS-30** and **USABSS-31** satellite networks under Appendices 30 and 30A

- Ref.:
- a) Special Section AP30-30A/E/467 annexed to BR IFIC 2633 of 25 November 2008
 - b) Special Section AP30-30A/E/496 annexed to BR IFIC 2659 of 15 December 2009
 - c) Telefax from the Administration of the Netherlands AT-EZ/6432257 of 15 July 2010

Dear Sir/Madam,

1. The Bureau recently received a telefax from the Administration of the Netherlands (see attached) stating that the assignments of the USABSS-30 and USABSS-31 satellite networks have already been brought into use. According to the Bureau's records, there is no information confirming that these assignments have been brought into use.

2. If these assignments have already been brought into use, in accordance with § 5.1.1 of Article 5 of Appendices 30 and 30A, as soon as possible, your administration is requested to notify the frequency assignments. Submission of the final characteristics under § 4.2.16 of Article 4 of Appendices 30 and 30A would also be necessary.

Yours faithfully,

Y. Henri
Chief SSD



To
 Valery Timofeev, Director
 Radiocommunication Bureau, ITU
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Id-number	:		File number	:	-
Contact	:	Mr. Johan Kroon	Date	:	15 July 2010
Telephone	:	+31 50 5877 344	Your reference	:	30-30A4(SNP)/0.1725/10
Our reference	:	AT-EZ/6432257	Number of pages	:	1 of 5
Enclosure(s)	:	3			
Subject	:	SF_BSS5 network at 114.5° W.L.			

Dear Mr. Timofeev,

This letter is submitted in furtherance of the request our Administration made on 18 March 2010 pursuant to No. 4.2.22 of Appendix 30 and No. 4.2.22 of Appendix 30A of the Radio Regulations. In its earlier correspondence, the Netherlands Administration requested the assistance of the Radiocommunication Bureau in connection with a situation that has developed concerning proposed modifications to the Appendices 30 and 30A Region 2 BSS and BSS Feeder Link Plans from the United States of America, and the impact the U.S. actions are having on the ability of the Netherlands Administration to successfully complete its obligation to seek agreement from the United States for the 2005 Plan Modification request for our SF_BSS5 network at 114.5° W.L.

The Netherlands Administration recognizes and accepts its obligations regarding agreement from the U.S. for plan entries and modification requests that predate the SF_BSS5 network, and reported to you our operator's difficulties in trying to fulfil this obligation. The facts that prompted this Administration to seek the assistance of the Radiocommunication Bureau concern two newer BSS networks of the United States of America that you report have not been notified as having been brought into use – USABSS-30 at 110° W.L. and USABSS-31 at 119° W.L. These new U.S. networks were first filed in 2008 and 2009 and thus are behind our SF_BSS5 network. Our understanding from participation by the operator we have designated for the SF_BSS5 network in the U.S. domestic authorization process for the two U.S. networks in question is that USABSS-30 and USABSS-31 are not mere replacements of the prior U.S. BSS networks at the 110° W.L. and 119° W.L. locations that are deemed affected by SF_BSS5; they are higher-power/greater coverage spacecraft than the spacecraft they replace, and thus required modifications to the Region 2 BSS Plans in Appendices 30 and 30A before being brought into use.

There is no question that the USABSS-30 and USABSS-31 frequency assignments are operational. The U.S. operator notified the U.S. FCC that the USABSS-30 satellite (EchoStar 11) commenced "regular operation" at the 110.0° W.L. orbital location on August 27, 2008 (see Attachment 1 to this letter), and that the USABSS-31 satellite (EchoStar 14) "became fully operational at 118.9° W.L. on May 27, 2010" (see Attachment 2 to this letter). Despite the fact that USABSS-30 has been in regular operation for nearly two years, it is our understanding that no notification of the bringing into use of the frequency assignments for the new network has been provided to the Bureau under Article 5 of Appendices 30 and 30A. The same is true, apparently, for the newly-operational USABSS-31 network's frequency assignments.

There are two possible scenarios here. First, the two new U.S. BSS networks could be true replacements for the prior U.S. BSS networks operated by the same operator at the 110.0° W.L. and 119° W.L. locations, and are operating within the current Region 2 BSS Plan entries associated with the earlier networks (specifically,

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Date : 15 July 2010
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with USABSS-15 at 110.0° W.L. and with USABSS-14 at 119° W.L.). This would mean that upon commencement of regular operation of the new satellites, the use of the frequency assignments by their respective predecessor satellites was ceased, and there is no at-variance operation from the existing assignments. Second, the two new U.S. BSS networks are not true replacements, and are operating outside the Region 2 BSS Plan parameters and therefore require a modification of the Region 2 BSS Plans in Appendices 30 and 30A.

The Netherlands Administration understands that principles of international comity and presumptions of good faith due all Member States create a rebuttable presumption in the Bureau's view that the absence of notification filings for the clearly operational USABSS-30 and USABSS-31 satellite networks signifies that the first scenario is the correct scenario. In such a case, the failure of the U.S. Administration to provide the notification of bringing into use, while still a violation of the Radio Regulations, would have no operational significance for the Plans or this Administration's 2005 filing for SF_BSS5 at 114.5° W.L. In other words, our obligation under Article 4 of the Plans to secure agreements with respect to earlier U.S. entries and proposed modifications to the Plans would be unaffected by the replacement of older spacecraft with operationally identical new spacecraft.

Regrettably, the facts as we understand them – starting with the fact that both USABSS-30 and USABSS-31 were filed as modifications to the Region 2 Plans – combine to clearly point to the second scenario as the correct scenario. The idea that the new satellites can be operated in accord with the earlier Plan modifications is not correct. As we indicated in our 18 March correspondence, each of the new satellites has higher power, more spot beams, and broader coverage than the satellites they are replacing, and there is no question that the OEPM changes for each of the new U.S. networks individually will substantially exceed – by as much as several orders of magnitude – the 0.25 dB trigger level specified in Annex 1 to Appendix 30.

In its domestic application for the EchoStar 11 satellite (USABSS-30), the operator stated that, "[t]he EchoStar 11 satellite ... will update, improve, and increase the power of EchoStar's full-CONUS service from 110° W.L., resulting in consumers receiving the programming they demand while preserving the quality of reception to which they have been accustomed." Application of EchoStar Satellite Operating Company to the FCC, at 2 (FCC File No. SAT-LOA-20070622-00065). The operator goes on to note that "EchoStar 11 will improve CONUS service at 110° W.L. by using higher power operations at the slot than are possible using the CONUS capabilities of the EchoStar 8 satellite, which is currently providing CONUS service at 110° W.L.," and that "additional power is necessary to respond to consumer demand and competitive pressures without sacrificing reception quality." Application at 3, 4. "CONUS" is an acronym for continental United States. In its domestic authorization orders for EchoStar 11, the FCC recognized that the satellite, as designed, has a higher potential for interference than the satellite it was replacing. See *Petition of Spectrum Five, LLC for Clarification of Condition in EchoStar 11 License*, DA 08-1955, at ¶ 8 (U.S. FCC Intl Bur., released 26 August 2008) (Attachment 3 to this letter).

The operator of USABSS-31 made similar representations regarding increases in power in its domestic U.S. application for the EchoStar 14 satellite at 119° W.L. In the Application of DISH Operating Corporation, LLC to the FCC, at 2, 3 (FCC File No. SAT-LOA-20090518-00053), the operator referred to "higher-power satellites, such as EchoStar 14," and emphasized how the satellite could produce 51 spot beams as compared with the EchoStar 7 satellite's 15 spot beams from the same location. In a press briefing immediately after the March 2010 launch of EchoStar 14, the president of EchoStar Satellite Services was quoted in an industry publication as representing that EchoStar 14 will double the communications power of



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earlier EchoStar satellites" See "Proton Rocket Launches New DISH Network Satellite," SPACE.com (22 March 2010) (<http://www.space.com/missionlaunches/proton-dish-satellite-launch-afn-100322.html>) -- last visited 12 July 2010). In its domestic authorization order for EchoStar 14, the FCC expressly noted that it was allowing the operator to exceed levels in the Region 2 BSS and BSS Feeder Link Plans, and that it was doing so without requiring the operator to secure agreement with our operator of the earlier-filed SF_BSS5 network. *DISH Operating L.L.C.*, DA 10-407, at ¶¶ 7, 10-11 (U.S. FCC Int'l Bur., released 10 March 2010).

Analysis by our designated operator for SF_BSS5 confirms that the USABSS-30/EchoStar 11 satellite and USABSS-31/EchoStar 14 satellite have significantly greater interference potential than the USABSS-14 and USABSS-15 satellites they replaced (or in the case of USABSS-31, at least partially replaced). The USABSS-15/EchoStar 8 satellite was designed to provide up to 32 CONUS transponders with 120 Watt TWTs, or operate in a high-power mode with 16 transponders active at 240 Watt TWTs. The spot beam coverage of USABSS-15 is only for limited areas of the United States, and for limited transponder frequencies that can interfere with SF_BSS5 4.5 degrees to the west. By contrast, the high-power CONUS beams of USABSS-30 create interference across the entire CONUS area to all 19 affected transponders of the SF_BSS5 satellite. We note further that the peak EIRP of the USABSS-15 satellite applies only to the highest-power beam; the satellite had much lower power beams on the U.S. west coast. Because USABSS-30 operates totally in the "CONUS" mode at a much higher power than the satellite it replaced, the result is that the USABSS-30 satellite will create much more interference to SF_BSS5 compared to the combined spot beam/CONUS operation of USABSS-15. The situation between USABSS-31 and USABSS-14 is similar, in that when the new satellite is operated in its "all-CONUS" mode, interference at a higher level is produced in areas of the United States where operation of the same transponders with their limited geographic coverage produced no or lower-power interference. Not only does the higher-power of the new satellite create significantly more interference to SF_BSS5 than the combined spot-beam/CONUS operation of USABSS-14, there is no way that the operator can restrict interference from USABSS-31 to USABSS-14 levels without turning many transponders completely off.

We are hesitant to burden the BR with a highly-detailed analysis at this juncture, but please be advised that this Administration and our designated operator for SF_BSS5 are prepared to provide whatever level of detail the BR may need or desire to help address the concerns we have. The situation from this pair of later-in-time "replacement" satellites from the U.S. is very serious in terms of impact on SF_BSS5's plans for the 114.5° W.L.

The Radio Regulations are very clear on the ability of an administration to bring into use a modification to the Region 2 BSS and BSS Feeder Link Plans for which agreement has not been secured from all affected administrations. Section 4.2.1 of Appendix 30 specifies that the procedure of Article 4 "shall" be applied before any notification filing is to be made to the BR. Section 4.2.14 addresses the publication of the list of administrations "whose agreements are required for completion of the Article 4 procedure." This is a very important provision. It means that where an administration needs to seek agreement to effect a Plan modification, achievement of that agreement is required to complete the Article 4 procedure, and the Article 4 procedure must be completed before notification. Thus, notification and bringing into use under Article 5 of Appendix 30 cannot occur until agreement is reached with affected administrations.

In its above-referenced correspondence, the U.S. FCC disagrees with the proposition that Appendix 30 rules required agreement prior to the launch and bringing into use of a satellite network. U.S. FCC Telefax 800C2/SEB10201, at 2. We maintain that the U.S. FCC is not correct in its reading of the Radio



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Regulations, and the effects of its reading on the orderly administration of the Plans in Appendices 30 and 30A is very significant in cases such as this where agreement would be made more difficult to reach due to the increased power, greater coverage, and closer proximity to our SF_BSS5 network (by .1 degree of longitude for USABSS-31) of the proposed plan modifications.

With respect to the obligations the Netherlands Administration has to secure agreement with the earlier-in-time plan modification filings made for USABSS-15 and USABSS-14, it is very important to know:

- i) whether the networks remain in place or have been supplanted by the new USABSS-30 and USABSS-31 networks now operating at the nominal locations on the same channels;
- ii) whether the new USABSS-30 and USABSS-31, despite having very different parameters in terms of power and spot-beam coverage than the networks they were to have replaced, are being operated within all of the parameters of the relevant U.S. plan modification filings that predate this Administration's filings for plan modifications at 114.5° W.L.;
- iii) whether a network under the Region 2 BSS and BSS Feeder Link Plans that has not completed the Article 4 procedure may bring its frequency assignments into use, and what status, if any, those assignments have; and
- iv) whether frequency assignments that exceed the Region 2 BSS and BSS Feeder Link Plan parameters that are brought into use prior to any agreement being achieved with affected Administrations can have any standing at all under the Radio Regulations.

Together, the two new U.S. networks will have significant negative interference effects on the Netherlands Administration's SF_BSS5 network that they surround at 114.5° W.L. As we suspected in our initial 18 March 2010 correspondence, and as emerging fact seem increasingly to confirm, the United States of America has failed to follow the mandate of Article 3 and the procedures of Articles 4 and 5 of Appendices 30 and 30A with respect to the USABSS-30 and USABSS-31 networks. Initial information on the U.S. networks was not first submitted at least two years prior to the dates on which they were or are to be brought into use; notices under No. 5.1.1 of Appendix 30 and the corresponding provision of Appendix 30A were either not filed or not timely filed; and the United States has made no effort (in fact the U.S. FCC claims no prior obligation) to secure agreement from the Netherlands Administration or the operator of the SF_BSS5 network with respect to the U.S.'s proposed plan modifications at the orbital locations immediately to the east and to the west of SF_BSS5.

We continue to seek assurance that all measures required to protect the rights the Netherlands Administration secured by filing the SF_BSS5 modification in 2005 will in fact be taken, notwithstanding the bringing into use of uncoordinated BSS networks. We also seek confirmation of our understanding that any operation by the USABSS-30 and USABSS-31 networks that is both uncoordinated with SF_BSS5 and outside the parameters of the U.S. entries for 110° W.L. and at 119° W.L. in the Region 2 BSS and BSS Feeder Link Plans is considered to have no priority and operate at their own peril with no protection.



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Please let us know whether you require any additional information from our Administration regarding the situation we have described. In this matter you can contact Mr. Johan Kroon of the Netherlands Radio Communication Agency. Tel +31 50 5877 344 and E-mail: johan.kroon@at-ez.nl.

Yours sincerely,

on behalf of
The Minister of Economic Affairs

ir. M.M. Hoogland MBA
Head of the Networks Department
Radlocommunications Agency Netherlands

Attachments (2)

With copy (with attachments) to:

R. David Wilson, CEO Spectrum Five LLC



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ATTORNEYS AT LAW

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FILED/ACCEPTED

SEP 17 2008

Federal Communications Commission
Office of the Secretary

September 17, 2008

Via HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: **EchoStar Satellite Operating L.L.C.**
File No. SAT-LOA-20070622-00085; Call Sign 52738

Dear Ms. Dortch,

EchoStar Satellite Operating L.L.C., by its attorneys, is pleased to certify that the EchoStar 11 satellite commenced regular operations from its licensed orbital location at 110.0° W.L. on August 27, 2008.

Yours sincerely,


Chung Hsiang Mah
Counsel for EchoStar Satellite Operating L.L.C.

cc:
Andrea Kelly, International Bureau
Jay Whaley, International Bureau



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ATTORNEYS AT LAW

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June 3, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: **DISH Operating L.L.C.**
File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064, SAT-MOD-20100212-00027; Call Sign: S2790

Dear Ms. Dortch:

On behalf of DISH Operating L.L.C. ("DISH"), this letter notifies the Commission pursuant to condition "c" of the above referenced applications¹ that EchoStar 14 became fully operational at 118.9° W.L. on May 27, 2010. DISH will continue to operate the satellite pursuant to the above referenced authorization and attendant conditions.

Yours sincerely,

/s/
Petra Vorwig
Counsel for DISH Operating L.L.C.

¹ See *In re 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*, 25 FCC Rcd 2311, ¶ 15(c).



Federal Communications Commission

DA 08-1955

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Spectrum Five, LLC)
Petition for Clarification of Condition)
in EchoStar 11 License)

ORDER

Adopted: August 26, 2008

Released: August 26, 2008

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we grant a request filed by Spectrum Five, LLC (Spectrum Five) to the extent that we are adding an additional term or condition for the operation of the EchoStar 11 satellite, pursuant to an existing condition of the EchoStar 11 satellite license held by EchoStar Satellite Operating Corporation (EchoStar).¹ As discussed below, we have determined that this new term or condition is necessary in order to effectuate the coordination and/or agreements required by EchoStar's authorization.

II. BACKGROUND

2. Spectrum Five is a Direct Broadcast Satellite (DBS) operator licensed by the Netherlands. On behalf of Spectrum Five, the Netherlands filed documentation for two satellites at the 114.5° W.L. orbit location with the International Telecommunication Union (ITU) on March 29, 2005. In 2006, Spectrum Five was permitted to enter the U.S. market for DBS services using those two satellites at 114.5° W.L., between neighboring DBS satellites at 110° W.L. and 119° W.L.²

3. In January 2008, EchoStar was granted authority to launch and operate EchoStar 11, a DBS satellite at the 110° W.L. orbit location.³ Subsequently, on May 15, 2008, the United States made a filing with the ITU for EchoStar 11 (USABSS-30). Spectrum Five notes, however, that

¹ See Policy Branch Information, *Public Notice*, DA 08-120 (released Jan. 18, 2008).

² 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*, 21 FCC Rcd 14023, 14043 (para. 43) (Inrl. Bur., 2006)(*Spectrum Five Order*). One of the satellites at the 110° W.L. location at that time was the EchoStar 8 satellite, which has ITU date priority over the Spectrum Five satellites. Spectrum Five's access to the U.S. market was conditioned on Spectrum Five completing coordination with its neighboring satellite operators.

³ See Policy Branch Information, *Public Notice*, DA 08-120 (released Jan. 18, 2008).



Federal Communications Commission

DA 08-1955

the ITU has not yet published the documentation for the EchoStar 11 satellite.⁴ One of the conditions placed on the EchoStar 11 authorization reads as follows:

EchoStar shall provide the Commission with all information it requires in order to modify the Appendix 30 BSS Plan and associated Appendix 30A feeder-link Plan to incorporate the characteristics of the BSS space station of the EchoStar 11 satellite, USABSS-30, in accordance with the ITU Radio Regulations. EchoStar shall be held responsible for all cost recovery fees associated with these ITU filings. We also note that no protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed, or, with respect to individual administrations, coordination agreements are successfully completed. Any radio station authorization for which coordination has not been completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations.⁵

4. On August 8, 2008, Spectrum Five filed a petition for clarification regarding the conditions in the EchoStar 11 license. Specifically, according to Spectrum Five, under the condition quoted above, "the Commission should not permit EchoStar to exceed the parameters specified in the current U.S. assignment in the Region 2 BSS Plan⁶ and associated Feeder Link Plan at 110° W.L. unless and until EchoStar (1) fulfills its obligation to secure the agreement of the Netherlands, or (2) provides explicit technical information to demonstrate that such coordination can be effected."⁷

5. Spectrum Five explains that the EchoStar 11 satellite is a replacement for the EchoStar 8 satellite at 110° W.L.⁸ Spectrum Five further notes that the EchoStar 11 satellite is designed to operate at higher power levels than the EchoStar 8 satellite that it is replacing.⁹ Spectrum 5 argues that the EchoStar 11 satellite deviates from the Region 2 BSS Plan, and that "EchoStar grossly underestimates the degree to which EchoStar 11 will increase interference to the Spectrum Five network."¹⁰

⁴ Letter from Todd M. Stansbury, Counsel for Spectrum Five, to Marlene H. Dortch, Secretary, FCC (dated Aug. 21, 2008) (*Spectrum Five Letter*) at 1.

⁵ See EchoStar 11 License, Call Sign S2736.

⁶ The current U.S. assignment in the Region 2 BSS Plan for 110° W.L. is EchoStar 6. However, in an *ex parte* statement filed on August 21, 2008, Spectrum Five states that the EchoStar 11 satellite should not be operated at power levels above those of EchoStar 8, prior to coordination or provision of technical information to demonstrate that such coordination can be effected. *Spectrum Five Letter* at 1-2.

⁷ Spectrum Five Petition at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2-3.



Federal Communications Commission

DA 08-195

6. Spectrum Five seeks to ensure that its ITU priority rights can be effectively enforced by the Commission notwithstanding the anticipated future service disruptions to EchoStar's subscribers if EchoStar 11 commences service at 110° W.L. prior to completion of coordination with Spectrum Five.¹¹ Spectrum Five further asserts that EchoStar has not attempted to coordinate the EchoStar 11 satellite with Spectrum Five's planned satellite at 114.5° W.L.,¹² even though Spectrum Five has attempted to contact EchoStar to coordinate.¹³ Therefore, Spectrum Five "urges the Commission to clarify the conditions in EchoStar 11's authorization to prohibit operation of the satellite outside the parameters set forth in the existing U.S. BSS assignment at 110° W.L. until such time as EchoStar can complete coordination or demonstrate that coordination is feasible."¹⁴ Therefore, Spectrum Five maintains that the clarification it seeks would serve the public interest by preventing harmful interference to its higher priority satellites, and by eliminating the risk of significant consumer confusion and harm.¹⁵

7. On August 18, 2008, EchoStar filed an opposition to Spectrum Five's petition, claiming that the petition was not timely filed. EchoStar contends further that it cannot coordinate EchoStar 11 with Spectrum Five's satellites until those satellites are coordinated with EchoStar 8, because that coordination will require Spectrum Five to redesign its satellites. Finally, according to EchoStar, it is unreasonable to require EchoStar 11 to reduce its power before the Spectrum Five satellites are launched.

III. DISCUSSION

8. Pursuant to the EchoStar 11 license condition quoted above, EchoStar "may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations." We find here that an additional term of operation, whereby EchoStar would be required to tailor its EchoStar 11 operations to avoid interference to any operational system that has a higher ITU priority than the priorities obtained by EchoStar, is a necessary part of a successful coordination, given that EchoStar interference with an operational Spectrum 5 network having higher ITU priority would inevitably impair coordination negotiations.¹⁶ To this end, we hereby impose the following requirement on EchoStar's operation of the EchoStar 11 satellite (whose ITU filing is USABSS-30):

If coordination for EchoStar 11 has not been completed and/or necessary agreements under Appendices 30 and 30A have not been obtained with a satellite network having ITU date of receipt priority, and if a satellite network with superior ITU date of receipt priority is brought into use at its assigned location and receives harmful interference, then

¹¹ *Spectrum Five Letter* at 1.

¹² *Spectrum Five Petition* at 4-5.

¹³ *Spectrum Five Letter, Attachment*.

¹⁴ *Spectrum Five Petition* at 5.

¹⁵ *Spectrum Five Petition* at 5.

¹⁶ Spectrum Five styles its request as an "Emergency Request for Clarification of Conditions on the Operation of the EchoStar 11 DBS satellite at 110° W.L." Petitions for clarification are governed by Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2. Section 1.2 does not include any provisions regarding deadlines for filing a petition for clarification. For this reason, we do not agree with EchoStar that we should reject Spectrum Five's request as being untimely filed.



Federal Communications Commission

DA 08-1935

EchoStar 11 must modify its operations to not exceed the technical specifications of the nominal 110° W.L. location in the Region 2 BSS plan, as such specifications would be modified by the pending EchoStar 8 plan modification proposal (to the extent the EchoStar 8 proposal has ITU date of receipt priority with respect to the satellite network brought into use).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that the request of Spectrum Five, LLC, IS GRANTED to the extent indicated above and otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Helen Doménici
Helen Doménici
Chief, International Bureau *bx/Re*



Radiocommunications Agency
Ministry of Economic Affairs

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Contact

J.G. Kroon

Date 22 September 2010
Subject USABSS-30 and USABSS-31

Our reference
AT-EZ/6449574

Your reference
-

Enclosures
-

Dear Mr. Sakamoto,

In reply to your e-mail dated 10 September 2010 by which you reported that there has been no response from the US Administration to your inquiry regarding USABSS-30 and USABSS-31 I ask your attention to the following.

In light of the evidence of operation of both USA spacecraft – more than two years in the case of USABSS-30 and more than three months in the case of USABSS-31 – that we provided with our 15 July 2010 correspondence to the Bureau (our Ref. AT-EZ/6432257), my Administration is not satisfied with a position that the Bureau “has to assume” that the assignments are not brought into use pending a response from the USA Administration.

As we stated in our 15 July correspondence all indications are that the two spacecraft are operating at variance from the Region 2 Plans, and thus are operating in violation of the Plans and the Radio Regulations. The satellites have materially different designs from the satellites they ostensibly were to replace; are believed to be incapable of operating at the lower power/coverage levels of the current Plan entries; and were specified by the operator in sworn applications to the USA regulator that they are significant expansions in capability over the previous spacecraft. We provided copies of the notices the operator filed with the USA regulator affirming that the satellites and their frequency assignments had been brought into use.

Under these circumstances, we are of the opinion that the Bureau needs to be assertive in pursuing and demanding cessation of use of frequencies that all evidence – including evidence we placed squarely in the Bureau’s hands – says it is in full contravention of the Region 2 BSS and BSS Feeder Link Plans and the Radio Regulations. We believe that the Bureau should not merely wait for a USA response that as we believe it may never come. Every day this spacecraft operate is another day where it is harder for our operator of the severely affected SF_BSS5 network to proceed with its implementation plans.



Date
22 September 2010
Our reference
AT-EZ/6449574

Thank you in advance for your understanding and diligence.

Hoogachtend,

De Minister van Economische Zaken,
namens deze:

B.T. van Duijvenvoorde
Hoofd Veiligheid
Agentschap Telecom

With copy to:
Mr. Y. Henri, ITU, Head Space Systems Coordination Division
Mr. R. David Wilson, CEO Spectrum Five LLC

MEMORANDUM

15 November 2010

Subject: Inapplicability of No. 4.4 of the Radio Regulations to Operation of Region 2 BSS/BSS Feeder Link Satellites Prior to Completion of the Procedures in Article 4 of Appendices 30 and 30A

This explanatory Memorandum is a follow up to points that have been raised during discussions between the Administration of The Netherlands and representatives of the U.S. Department of State in connection with the impact that two broadcasting-satellite service ("BSS") satellites from the U.S. –USABSS-30 at 110° W.L. and USABSS-31 near 119° W.L.– are having on The Netherlands' implementation of the earlier-filed SF_BSS5 BSS satellite at 114.5° W.L. In these discussions, The Netherlands has asserted that the U.S., by permitting USABSS-30 and USABSS-31 to commence operation prior to completion of the plan-modification procedures in Appendices 30 and 30A of the International Telecommunication Union ("ITU") Radio Regulations, has violated its treaty obligations under the ITU Radio Regulations. The following explanation demonstrates that the position stated by the U.S. State Department representatives regarding supposed operation of the USABSS-30 and USABSS-31 networks under the provisions of No.4.4 of the Radio Regulations (which permits operation of radio stations in derogation of the ITU Radio Regulations in certain narrowly prescribed instances) is misinformed. Not only is No. 4.4 unavailable to the U.S. in the subject circumstance, the very assertion by U.S. representatives of its applicability serves as complete confirmation that the premature operation of the two satellites in the BSS constitutes a treaty violation by the U.S. with respect to our SF_BSS5 network.

There are at least two reasons why proposed modifications to the Region 2 BSS Plan may not be operated prior to completion of the modification procedures– even on a strictly non-harmful interference/non-protected basis under No. 4.4 of the Radio Regulations.

First, the Plans strictly prohibit any bringing into use of frequency assignments prior to completion of the procedures in the Plans. An essential element of the modification procedure is that the modifying administration must secure the agreement of all affected Plan participants with established rights, including earlier-filed pending Plan modification proposals. With regard to USABSS-30 and USABSS-31, the U.S. has yet to initiate coordination with the Dutch Administration, whose SF_BSS5 pending modification is affected by the later U.S. modifications, despite the fact that both U.S. networks are already in operation.

Appendices 30 and 30A leave no room for any credible assertion that interim operation may occur under No. 4.4 of the Radio Regulations.¹

Indeed, administrations are strictly prohibited from bringing proposed modifications into use prior to completion of the procedures for modifying the Plans (which include achieving agreement with affected Plan entries and prior pending modifications). An attempt to bring into use frequency assignments where the procedures are not complete – whether under the guise of No. 4.4 of the Radio Regulations or some other claim of non-interference operation – violates the plain language and ordered scheme for Plan modifications in Appendices 30 and 30A. Such an attempt also violates the key concept that changes in the Plans need to be demonstrated to be compatible with all prior Plan entries and modification proposals before being implemented.

No. 4.4 cannot be used to allow operation of a network that has not been confirmed to be compliant with the structure of Appendices 30 and 30A. An administration cannot purport on the one hand to be following the Plans' procedures with the submission of the filings for BSS/BSS Feeder Link networks, while on the other hand flouting those same procedures by claiming that No. 4.4. allows pre-agreement operation of frequency assignments that the procedures prohibit. For the Plans to provide the requisite regulatory certainty for all existing entrants, operation under No. 4.4 or any other non-Plan basis is prohibited. After all, the administrations that are required to secure agreements for their new/modified assignments have been identified under the Plan procedures as producing an interference impact on existing and/or earlier-in-the-queue networks.

It is also worth noting that the Articles 9 and 11 processes for unplanned FSS expressly provide that there will be some occasions where operation prior to completion of coordination is permitted.² No such mechanism for pre-agreement operation is included in the Appendix 30 and 30A Plans.

¹ For example, No. 3.2 of Appendix 30 to the Radio Regulations states “*Member States SHALL not change the characteristics specified in the...Region 2 Plan, or bring into use assignments to broadcasting stations ... except as provided for in the Radio Regulations and the appropriate Articles and Annexes of this APPENDIX.*” (emphasis added). No. 4.2.14ter of Appendix 30 addresses the publication of the list of administrations “whose agreements are required for completion of the Article 4 procedure.” Because the procedure cannot be considered complete until affected administrations provide their agreement, it is clear that where an administration needs to seek agreement to effect a Plan modification, achievement of that agreement is required to complete the Article 4 procedure. No. 4.2.1 of Appendix 30 specifies that the procedure of Article 4 “shall” be applied before any notification filing is to be made to the BR. The obligation not to implement changes to the Plan prior to completion of the modification procedures is so critical that No. 4.2.1(a) expressly applies to changes envisioned to operating BSS satellites. Under No. 5.2.6 of Appendix 30, administrations whose networks have received unfavorable findings (including for non-conformity to the Plans), and who resubmit those notices without modification, undertake not to bring their network assignments into use until the BR has made a favorable finding.

² See Nos. 11.38, 11.41, 11.42, and 11.44.1. These regulations contain a mechanism whereby a satellite network that has not completed coordination, and indeed is predicted by the Bureau to cause harmful interference to networks with which coordination is required, may nonetheless try to operate for four months without causing harmful interference and have a filing “provisionally” recorded in the Master Register converted to a definitive filing.

Equally important is the recognition that operation on a non-harmful interference basis is permitted under Article 11 by an unplanned network filed in accordance with and following the specific Article 9 and Article 11 procedures for operation prior to completion of coordination; this type of non-harmful interference basis operation is not operation under No. 4.4. A satellite network with frequency assignments filed for one purpose (e.g., operation in the BSS Plans) does not and cannot suddenly become a network under No. 4.4 just because the sponsoring administration has failed to follow the Radio Regulations and been called out for its shortcomings.

An Administration cannot cite No. 4.4 to cure operation in violation of the Radio Regulations, even if such operation does not result in harmful interference. More specifically, No. 4.4 is not a default mechanism that automatically kicks in; filings made under another procedure do not somehow become filings under No. 4.4. Operation of a satellite network under No. 4.4 necessitates specific filings with the ITU for operation of a satellite network under No. 4.4.³

On this last point, there is no indication that the USA ever filed such a notice for either USABSS-30 or USABSS-31, so any claimed operation under No. 4.4 – even if otherwise permitted for sake of argument – is not recognized. What is indicated here is that the USA has allowed its BSS satellites to operate for many years, and has only notified their bringing into use in the waning days of the regulatory bringing-into-use periods specified in the Plans. By then, all agreements required to notify the satellite networks and their plan modifications will either have been obtained or the need for such agreements will have become moot with the passage of time and cancellation of prior network filings for modifications that were not timely brought into use. This is exactly what the USA did earlier this year with USABSS-14 and USABSS-15 – which had each been operational for at least seven years as EchoStar 7 and 8, and were only notified to the ITU in the final days of the eight-year regulatory period under § 4.2.6 of the Plans. This apparently is what the USA now intends to do with USABSS-30 and USABSS-31 – both of which were notified by the operators to the U.S. FCC as being in use many months ago, but neither of which has been notified to the ITU.

This behavior is compelling evidence that the U.S. FCC knows its operation of BSS satellites prior to completion of the Appendix 30 and 30A procedures violates the treaty obligations of the United States under the ITU Radio Regulations. The mere fact that the U.S. may have established for itself a practice of allowing such premature operations of BSS satellites is no justification; prior to the emergence of the SF_BSS5 network in a location that can serve the Americas, most of the potential for impact from premature operation was limited to U.S. interests, making this primarily a domestic matter. That is the case no longer.

³ No. 8.4 of the Radio Regulations requires recordation for information purposes of non-conforming assignments under No. 4.4 (when the conditions for operation under No. 4.4 are met). The Rule of Procedure for No. 4.4 also references that operation of radio stations under No. 4.4 does not happen without the recording of assignments under or with reference to No. 4.4. See Rules Concerning Article 4 of the RR, at §§ 1.2 and 1.3 (2009 ed.). While No. 11.8 suggests that notification of assignments under No. 8.4 is required only where the filing administration wants to have the assignments recorded for information, the fact remains that assignments made for one purpose cannot be simultaneously claimed to be filings under No. 4.4.

Second, while it was noted above that there is no evidence that the U.S. has filed any satellite network assignments at the USABSS-30 and USABSS-31 orbital locations for operations under No. 4.4., there is also no evidence that the U.S. FCC has ever invoked No. 4.4 conditions in its domestic authorizations for the operator of those networks. No. 4.4 specifies that:

Administrations of the Member States shall not assign to a station any frequency in derogation of either the Table of Frequency Allocations in this Chapter or the other provisions of these Regulations, except on the express condition that such a station, when using such a frequency assignment, shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the Constitution, the Convention and these Regulations.

There is no question that allowing USABSS-30 and USABSS-31 to be operated without completing the processes of the Plans means that the satellites are being operated in derogation of the Table of Frequency Allocations (which reference the Plans) *and* the provisions of the Plans themselves. If operation under No. 4.4 could take place, such operations would have to be authorized with the express condition that use of the assignments shall not cause harmful interference to or claim protection from harmful interference caused by a station operating in accordance with the Radio Regulations.

Instead, examination of U.S. FCC authorizations for the satellites that are USABSS-30 and USABSS-31 reveals that pre-modification operations are subject to the condition that protection not be claimed, but they are not made subject to the condition that harmful interference may not be caused to stations operation in accordance with the provisions of the Radio Regulations.⁴ Thus, not only are there no ITU filings for operation under No. 4.4, the U.S. has never expressly conditioned the operations of USABSS-30 and USABSS-31 to not cause harmful interference as required by No. 4.4.

In summary, operation under No. 4.4 is not contemplated for the BSS and BSS Feeder Link Plan bands for sound reasons. Even if somehow consistent with Appendices 30 and 30A, operation of a satellite network under No. 4.4 requires more than operation in derogation of the Radio Regulations. Notification filings for information are needed, and operation must be made under an express condition that the FCC has never imposed on its U.S. operator. The U.S. lack of compliance with Appendix 30 and 30A Plans inures to the extreme detriment of new entrants to the Plans such as the operator of the SF_BSS5 network.

⁴ *DISH Operating L.L.C.*, DA 10-407, slip op. at ¶ 15.d (Int'l. Bur., released 10 March 2010) (authorizing pre-agreement operation on unprotected basis only); EchoStar Satellite Operating Corporation, Stamp Grant in File No. SAT-LOA-20070622-00085, at ¶ 3 (January 11, 2008) (same).

To
Valery Timofeev, Director
Radiocommunication Bureau, ITU
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Id-number	:		File number	:	-
Contact	:	Mr. Johan Kroon	Date	:	15 July 2010
Telephone	:	+31 50 5877 344	Your reference	:	30-30A4(SNP)/0.01278/10
Our reference	:	AT-EZ/6432276	Number of pages	:	1 of 3
Enclosure(s)	:	1			
Subject	:	SF_BSS5 network at 114.5° W.L.			

Dear Mr. Timofeev,

This letter is submitted in furtherance of the request our Administration made on 18 March 2010 pursuant to No. 4.2.22 of Appendix 30 and No. 4.2.22 of Appendix 30A of the Radio Regulations. In its earlier correspondence, the Netherlands Administration requested the assistance of the Radiocommunication Bureau (BR) in connection with a situation that has developed concerning proposed modifications to the Appendices 30 and 30A Region 2 BSS and BSS Feeder Link Plans from the United States of America, and the impact the U.S. actions are having on the ability of the Netherlands Administration to successfully complete its obligation to seek agreement from the United States for the 2005 Plan Modification request for our SF_BSS5 network at 114.5° W.L. In the 1 April 2010 correspondence referenced above, the BR indicates that among the networks and plan assignments that are identified as affected by the SF_BSS5 network is the USABSS-14 pending network at the 119° W.L. orbital location.

The Netherlands Administration notes that the United States of America submitted its notification filing under Article 5 of Appendices 30/30A on 2 March 2010 – five days prior to the expiration of the eight-year period in Section 4.2.6 of Appendix 30 within which assignments modifying the Region 2 BSS Plan must be brought into use. The notification was published in Radiocommunication Bureau (BR) IFIC No. 2672 on 29 June 2010. The notification filing indicated that the USABSS-14 space station was at 119° W.L., +/- 0.05° of east/west longitudinal tolerance. See Attachment 1, Excerpt from ITU Space Network Systems On-Line regarding 2 March 2010 Notification Filing for USABSS-14 (visited 12 July 2010).

There seems to be a material discrepancy between the orbital location specified with 0.05-degree precision in the 2 March 2010 Part II-S notification filing the U.S. made for USABSS-14, and the actual location of the satellite. The satellite was authorized in the U.S. domestic licensing process for operation at the 119.0° W.L. orbital location. See *EchoStar Satellite Corporation*, Order and Authorization, FCC File Nos. SAT-A/O-20010810-00071 and SAT-MOD-20010810-00073, DA 02-118, at ¶ 8 (Int'l Bur., released January 16, 2002). At some time after 2002, the satellite began operating at the 118.9° W.L. orbital location. This became clear to this Administration only in February of this year, when the operator of EchoStar 7 (the commercial name of USABSS-14) requested authority to relocate EchoStar 7 to 118.8° W.L. to accommodate a new BSS satellite that was due to be launched by the same operator in March 2010. In that application, the operator proposed to move the satellite out of its then-current location at 118.9° W.L. – not the authorized 119.0° W.L. slot. See Application of DISH Operating LLC for Special Temporary Authority to Relocate EchoStar 7, U.S. FCC File No. SAT-STA-20100219-00031 (filed 19 February 2010). In other words, less than two weeks prior to the U.S. submission of the notification filing for USABSS-14 which states that the satellite is operating within +/- 0.05 degrees of 119.0° W.L., the operator of the corresponding spacecraft filed an application

Number of pages : 2 van 3
Date : 15 July 2010
Our reference : AT-EZ/6432276

under oath placing the satellite outside of the notified station-keeping box, and expressing the intent to move the satellite eastward by an additional 0.1 degree. The move to 118.8° W.L. has presumably occurred given that the USABSS-31 satellite was reported by the operator to be in regular operation at 118.9° W.L. as of 27 May 2010.

The actual location of the USABSS-14 spacecraft is significant for two reasons: First, it appears certain that by the 7 March 2010 deadline for bringing the USABSS-14 frequency assignments into use, the United States of America did not have any spacecraft that corresponded to the USABSS-14 frequency assignments in operation at 119.0° W.L. +/- 0.05 degrees. As noted, the EchoStar 7 satellite was operating at 118.9° W.L., by the operator's own admission on 19 February 2010. This is outside the longitudinal tolerance the U.S. specified in its 2 March 2010 notification filing. The new U.S. satellite for which EchoStar 7/USABSS-14 was being moved further east to accommodate was not launched until 20 March 2010, so it is not a factor. Without an operating satellite at 119.0° W.L. by 7 March 2010, the frequency assignments for USABSS-14 could not have been brought into use as required in Appendices 30 and 30A, and the BR has no choice but to determine that the notice is defective and cancel the proposed plan modifications.

Second, and pending the BR's determination that the USABSS-14 notice and plan modification have lapsed, the fact that USABSS-14 has been identified as affected by our SF_BSS5 network at 114.5° W.L. must be addressed. Here, it matters whether the satellite from which this Administration has to achieve agreement is located as we understood at 119.0° W.L., or instead is significantly closer to us at 118.8° W.L. Pending cancellation of the USABSS-14 filings for failure to implement, this Administration requests that the BR clarify that our agreement obligation is for USABSS-14 within +/- 0.05 degrees of 119.0° W.L., and that the U.S. and its operator cannot claim any additional protection they could otherwise claim by having a spacecraft located as far east as 118.75° W.L. (i.e., 118.8° W.L. -0.05°), nor can they claim the right to cause any interference to SF_BSS5 beyond that which would have been allowed based on their filings for 119.0° W.L. Any other result would work a hardship on our operator.

We believe that it is imperative that the BR act quickly and forcefully to ensure that the integrity of the Radio Regulations and the Region 2 BSS/BSS Feeder Link Plans is maintained. If, as it very clearly seems, the United States of America did not bring proposed frequency assignments to USABSS-14 properly into use (notwithstanding the notification it filed to the contrary), the filing should be suppressed and USABSS-14 should be removed from the list of affected networks for SF_BSS5.

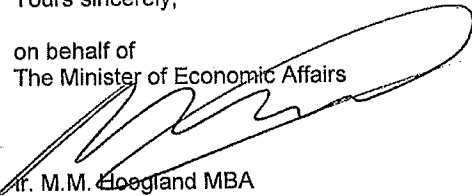
This Administration would be pleased to provide any additional information the BR may need or desire with regard to the location of the EchoStar 7 satellite that corresponds to the USABSS-14 notices.

Number of pages : 3 van 3
Date : 15 July 2010
Our reference : AT-EZ/6432276

Thank you in advance for your prompt consideration of this important matter.

Yours sincerely,

on behalf of
The Minister of Economic Affairs



Mr. M.M. Hoogland MBA
Head of the Networks Department
Radiocommunications Agency Netherlands

With copy to: Mr. R. David Wilson, CEO Spectrum Five LLC



Space Network Systems Online

General Query System: geostationary space station



SUMMARY INFORMATION			
Satellite name	Category	Adm Ntwk Org	Provn
USABSS-14	N	USA	-
			5.1.2/5.1.6
			02.03.2010
Date last modified			
Download notice into MS/ACCESS	2000	<input type="button" value="GO"/>	<input type="button" value="TSUM"/>

DETAILED INFORMATION

NOMINAL	TOLERANCE	INCLINATION	ACTIVE STATION
LONGITUDE EAST	WEST	EXCURSION	
-119	0.05	0.05	-

[PROVISIONS](#) | [AFF.NTW](#) | [TR.PROVN](#) | [PUBLICATION](#) | [TSUM](#) | [NWKSUM \(E\)](#) | [NWKSUM \(R\)](#) | [BEAMS](#) | [FREOS](#) | [EMISSIONS](#) | [EARTH STN](#) | [SPACE STN](#) | [STRAPS](#) | [NEW QUERY](#)

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 Revised: 12 July 2010



International Telecommunication Union, 1996-2008

AGENTSCHAP TELECOM GRONINGEN	
Reg.nr	6446495
Datum	09 SEP. 2010
Dossier nr	
Relatie nr	
T E L E F A X	



INTERNATIONAL TELECOMMUNICATION UNION
Radiocommunication Bureau

Place des Nations
CH-1211 Geneva 20
Switzerland

Verzonden	Bestemd	Ter info	Archief
afdeling	aan	aan	
SNE			
Time:		Page 1/3	Ref:

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Telefax Gr3: +41 22 733 72 56
Gr4: +41 22 730 65 00

Date: 9 September 2010

Time: [Signature] Page 1/3 Ref: 30-30A5(SNP)/0.3431/10

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P.O. Box 450
NL - GRONINGEN , 9700 AL
Netherlands

Fax: +31 50 5877400

Cc: Federal Communications Commission
445 12th Street, SW
US - WASHINGTON, D.C. , 20554
United States

Fax: ++1 202 4181208

From: Y. Henri, Chief SSD

For your reply:
E-Mail: mitsuhiro.sakamoto@itu.int
Fax: +41 22 730 5785 Tel: +41 22 730 5371

Subject: Operation of the **USABSS-14** satellite network under Appendices 30 and 30A

- Ref:
- a) Your telefax AT-EZ/6432276 of 15 July 2010
 - b) BR telefax 30-30A5(SNP)/0.2845/10 of 23 July 2010
 - c) USA telefax 800C2/SEB10297 of 31 August 2010

Dear Sir/Madam,

1. The Radiocommunication Bureau acknowledges the receipt of your telefax in reference a) above and wishes to inform your administration the results of the action initiated under the provisions of No. 13.6 of Article 13 of the Radio Regulations with regard to operation of **USABSS-14** satellite network.
2. The Administration of the USA has responded to Bureau's request (see attachment) to provide clarification confirming that each of the assignments of the **USABSS-14** satellite network recorded in the MIFR under Article 5 of Appendices 30 and 30A is operating in accordance with its notified characteristics.
3. In view of the response and unless advised otherwise, the Bureau will take no further action pertaining to your request for assistance.

Yours faithfully,

Yvon Henri
Chief, Space Services Department

Attachments: 1



Reg.nr	646694		
Datum	09 SEP. 2010		
Opsienr	FEDERAL COMMUNICATIONS COMMISSION		
Relatienr	INTERNATIONAL BUREAU		
Voorg.nr	WASHINGTON, D.C. 20554		
Volgnd.nr	fax: +1 202 418 1208; TWX: 710 822 0160		
Verantw. afdeling	Afstem. met	Ter info aan	Archief
SNE			
Bout			

In reply, refer to:
 800C2/SEB10297

**TO: ITU RADIOCOMMUNICATIONS BUREAU
 GENEVA, SWITZERLAND
 TELEFAX NO.: 41 22 730 5785**

DATE: 31 AUGUST 2010

**SUBJECT: OPERATION OF THE USABSS-14 SATELLITE NETWORK UNDER
 APPENDICES 30 AND 30A**

REFERENCE: YOUR LETTER 30-30A5(SNP)/0.2845/10, DATED 23 JULY 2010

THE U.S. ADMINISTRATION RESPONDS TO THE ABOVE REFERENCED LETTER FROM THE RADIOCOMMUNICATION BUREAU REGARDING THE OPERATION OF THE USABSS-14 NETWORK. ACCORDING TO THE LETTER, THE BUREAU HAS RECEIVED INFORMATION THAT "THE ASSIGNMENTS OF THE USABSS-14 SATELLITE NETWORK ARE NOT OPERATING IN CONFORMANCE WITH THEIR NOTIFIED CHARACTERISTICS RECORDED IN THE MASTER REGISTER (MIFR) UNDER ARTICLE 5 OF APPENDICES 30 AND 30A." THE LETTER FURTHER ASKS THE U.S. ADMINISTRATION TO PROVIDE THE BUREAU WITH INFORMATION CONFIRMING THAT EACH OF THE SUBJECT ASSIGNMENTS NOTIFIED AND CONFIRMED ON MARCH 2, 2010¹ "IS OPERATING IN ACCORDANCE WITH THEIR NOTIFIED CHARACTERISTICS RECORDED IN THE MASTER REGISTER."²

THE USABSS-14 NETWORK WAS CORRECTLY BROUGHT INTO USE, CONSISTENT WITH THE NOTIFIED CHARACTERISTICS IN THE MASTER REGISTER, BY MEANS OF THE ECHOSTAR-7 SATELLITE IN FEBRUARY 2002. DURING THE PERIOD OF OPERATION SINCE THAT TIME, THE ECHOSTAR-7 SATELLITE HAS OPERATED AT OR VERY CLOSE TO ITS NOMINAL ITU ASSIGNED ORBITAL LOCATION OF 119.0°W. DURING MORE THAN TEN YEARS OF OPERATION NO COMPLAINT OF HARMFUL INTERFERENCE RELATED TO THE USABSS-14 NETWORK HAS BEEN RECEIVED BY THE U.S. ADMINISTRATION, INCLUDING FROM THE ADMINISTRATION OF THE NETHERLANDS.

See Attachment 1, Excerpt from ITU Space Network Systems On-Line regarding Mar. 2, 2010 Notification Filing for USABSS-14.

² Radiocommunication Bureau, BR IFIC No. 2672 (June 29, 2010).

**THE U.S. ADMINISTRATION WELCOMES THE OPPORTUNITY TO DISCUSS THIS
MATTER DIRECTLY WITH THE ADMINISTRATION OF THE NETHERLANDS IF IT
WISHES TO PURSUE THIS MATTER FURTHER.**

REGARDS

**FEDCOMCOM
CROSS BORDER NEGOTIATIONS AND
TREATY COMPLIANCE BRANCH
STRATEGIC ANALYSIS AND NEGOTIATIONS DIVISION
Direct Fax No.: +1 202 418 1208 (preferred)
or +1 202 418 0398 (alternative)**

**Authorized: J. Payton
MTP International Bureau/SD

23. JUL. 2010 9:30

ONTVANGEN 23/07/2010 09:30:00

AGENTSCHAPTELECOM N°0833 P. 1/4

Reg.nr	6634809		
Datum	23 JULI 2010		
Pos. no	16641		
Relatienr			
Voorg.nr			
Signat.nr			
Verzorg	System	Ter info	Archief
afdr	act	act	
SKE			
afdr			



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Date: 23 July 2010

Time:

Page 1/

Ref: 30-30A5(SNP)0.2845/10

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From: Y. Henri, Chief SSD

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Subject: Operation of the **USABSS-14** satellite network under Appendices **30** and **30A**

Ref.: a) Part I-S and Part II-S publications annexed to BR IFIC 2672 of 29 June 2010
b) Telefax from the Administration of the Netherlands AT-EZ/6432276 of 15 July 2010

Dear Sir/Madam,

1. The Bureau recently received a telefax from the Administration of the Netherlands (see attached) stating that the assignments of the USABSS-14 satellite network are not operating in conformance with their notified characteristics recorded in the Master Register (MIFR) under Article 5 of Appendices **30** and **30A**.

2. Your Administration notified and confirmed the operation of the subject assignments on 2 March 2010. The Bureau published this information in BR IFIC 2672, referenced in a) above.

3. In view of this, the Bureau, in application of No. 13.6 b) of Article 13 of the Radio Regulations, would like to request your Administration to provide the Bureau, as soon as possible, with information confirming that each of those subject assignments is operating in accordance with their notified characteristics recorded in the Master Register.

Yours faithfully,

Y. Henri
Chief SSD



To
 Valery Timofeev, Director
 Radiocommunication Bureau, ITU
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Id-number	:		File number	:	-
Contact	:	Mr. Johan Kroon	Date	:	15 July 2010
Telephone	:	+31 50 5877 344	Your reference	:	30-30A4(SNP)/0.01278/10
Our reference	:	AT-EZ/6432276	Number of pages	:	1 of 3
Enclosure(s)	:	1			
Subject	:	SF_BSS5 network at 114.5° W.L.			

Dear Mr. Timofeev,

This letter is submitted in furtherance of the request our Administration made on 18 March 2010 pursuant to No. 4.2.22 of Appendix 30 and No. 4.2.22 of Appendix 30A of the Radio Regulations. In its earlier correspondence, the Netherlands Administration requested the assistance of the Radiocommunication Bureau (BR) in connection with a situation that has developed concerning proposed modifications to the Appendices 30 and 30A Region 2 BSS and BSS Feeder Link Plans from the United States of America, and the impact the U.S. actions are having on the ability of the Netherlands Administration to successfully complete its obligation to seek agreement from the United States for the 2005 Plan Modification request for our SF_BSS5 network at 114.5° W.L. In the 1 April 2010 correspondence referenced above, the BR indicates that among the networks and plan assignments that are identified as affected by the SF_BSS5 network is the USABSS-14 pending network at the 119° W.L. orbital location.

The Netherlands Administration notes that the United States of America submitted its notification filing under Article 5 of Appendices 30/30A on 2 March 2010 – five days prior to the expiration of the eight-year period in Section 4.2.6 of Appendix 30 within which assignments modifying the Region 2 BSS Plan must be brought into use. The notification was published in Radiocommunication Bureau (BR) IFIC No. 2672 on 29 June 2010. The notification filing indicated that the USABSS-14 space station was at 119° W.L., +/- 0.05° of east/west longitudinal tolerance. See Attachment 1, Excerpt from ITU Space Network Systems On-Line regarding 2 March 2010 Notification Filing for USABSS-14 (visited 12 July 2010).

There seems to be a material discrepancy between the orbital location specified with 0.05-degree precision in the 2 March 2010 Part II-S notification filing the U.S. made for USABSS-14, and the actual location of the satellite. The satellite was authorized in the U.S. domestic licensing process for operation at the 119.0° W.L. orbital location. See *EchoStar Satellite Corporation, Order and Authorization*, FCC File Nos. SAT-A/O-20010810-00071 and SAT-MOD-20010810-00073, DA 02-118, at ¶ 8 (Int'l Bur., released January 16, 2002). At some time after 2002, the satellite began operating at the 118.9° W.L. orbital location. This became clear to this Administration only in February of this year, when the operator of EchoStar 7 (the commercial name of USABSS-14) requested authority to relocate EchoStar 7 to 118.8° W.L. to accommodate a new BSS satellite that was due to be launched by the same operator in March 2010. In that application, the operator proposed to move the satellite out of its then-current location at 118.9° W.L. – not the authorized 119.0° W.L. slot. See Application of DISH Operating LLC for Special Temporary Authority to Relocate EchoStar 7, U.S. FCC File No. SAT-STA-20100219-00031 (filed 19 February 2010). In other words, less than two weeks prior to the U.S. submission of the notification filing for USABSS-14 which states that the satellite is operating within +/- 0.05 degrees of 119.0° W.L., the operator of the corresponding spacecraft filed an application

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under oath placing the satellite outside of the notified station-keeping box, and expressing the intent to move the satellite eastward by an additional 0.1 degrees. The move to 118.8° W.L. has presumably occurred given that the USABSS-31 satellite was reported by the operator to be in regular operation at 118.9° W.L. as of 27 May 2010.

The actual location of the USABSS-14 spacecraft is significant for two reasons:
First, it appears certain that by the 7 March 2010 deadline for bringing the USABSS-14 frequency assignments into use, the United States of America did not have any spacecraft that corresponded to the USABSS-14 frequency assignments in operation at 119.0° W.L. +/- 0.05 degrees. As noted, the EchoStar 7 satellite was operating at 118.9° W.L., by the operator's own admission on 19 February 2010. This is outside the longitudinal tolerance the U.S. specified in its 2 March 2010 notification filing. The new U.S. satellite for which EchoStar 7/USABSS-14 was being moved further east to accommodate was not launched until 20 March 2010, so it is not a factor. Without an operating satellite at 119.0° W.L. by 7 March 2010, the frequency assignments for USABSS-14 could not have been brought into use as required in Appendices 30 and 30A, and the BR has no choice but to determine that the notice is defective and cancel the proposed plan modifications.

Second, and pending the BR's determination that the USABSS-14 notice and plan modification have lapsed, the fact that USABSS-14 has been identified as affected by our SF_BSS5 network at 114.5° W.L. must be addressed. Here, it matters whether the satellite from which this Administration has to achieve agreement is located as we understood at 119.0° W.L., or instead is significantly closer to us at 118.8° W.L. Pending cancellation of the USABSS-14 filings for failure to implement, this Administration requests that the BR clarify that our agreement obligation is for USABSS-14 within +/- 0.05 degrees of 119.0° W.L., and that the U.S. and its operator cannot claim any additional protection they could otherwise claim by having a spacecraft located as far east as 118.75° W.L. (i.e., 118.8° W.L. -0.05°), nor can they claim the right to cause any interference to SF_BSS5 beyond that which would have been allowed based on their filings for 119.0° W.L. Any other result would work a hardship on our operator.

We believe that it is imperative that the BR act quickly and forcefully to ensure that the integrity of the Radio Regulations and the Region 2 BSS/BSS Feeder Link Plans is maintained. If, as it very clearly seems, the United States of America did not bring proposed frequency assignments to USABSS-14 properly into use (notwithstanding the notification it filed to the contrary), the filing should be suppressed and USABSS-14 should be removed from the list of affected networks for SF_BSS5.

This Administration would be pleased to provide any additional information the BR may need or desire with regard to the location of the EchoStar 7 satellite that corresponds to the USABSS-14 notices.

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Our reference : AT-EZ/8432276

Thank you in advance for your prompt consideration of this important matter.

Yours sincerely,

on behalf of
The Minister of Economic Affairs



Mr. M.M. Hoogland MBA
Head of the Networks Department
Radiocommunications Agency Netherlands

With copy to: Mr. R. David Wilson, CEO Spectrum Five LLC



Radiocommunications Agency
Ministry of Economic Affairs

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Contact
J.G. Kroon

Our reference
AT-EZ/6449561

Your reference
-

Enclosures
-

Date 22 September 2010

Subject 1) BR Telefax 30-30A5(SNP)/0.3431/10 dated 9 September 2010
2) US FCC Telefax 800C2/SEB10297 dated 31 August 2010
3) Netherlands Telefax AT-EZ/6432276 dated 15 July 2010

Dear Mr. Henry,

In our 15 July 2010 correspondence (Ref 3 above), our Administration informed the Bureau that there seems to be a substantial discrepancy between the orbital location specified with 0.05-degree precision in the 2 March 2010 Part II-S notification filing the USA Administration made for USABSS-14, and the actual location of the satellite. Among other things, we pointed out (with supporting citations that are not repeated here) that the satellite was authorized in the USA domestic licensing process for operation at the 119.0° W.L. orbital location; had at some point after 2002 been relocated to the 118.9° W.L. orbital location; and is currently operation in the 118.8° W.L. in order to accommodate a USABSS-31 which has been operating in the 118.9° W.L. orbital location since at least May 2010. These facts call into substantial question the accuracy of the USA notification filing for USABSS-14 – a filing that states that the satellite is operating within +/- 0.05 degrees of 119.0° W.L.

We are pleased that the Bureau apparently took our demonstration seriously and requested information from the United States and initiated an inquiry into the operation of USABSS-14 under the provisions of No. 13.6 of the Radio Regulations. We are, however, concerned by the Bureau's decision (Ref. 1 above) to take no further action on the basis of a response (Ref. 2 above) from the United States Administration that raises more questions than it answers.

In response to our demonstration (based on publicly-available information in the USA Administration's own files from its own operator) that the USABSS-14 spacecraft has not been operating within +/- 0.05 degrees of 119.0° W.L. for some time prior to submission of the notification filing in March 2010, and was now fully 0.2 degrees away from 119.0° W.L., the USA Administration had the following response:



THE USABSS-14 NEWTORK WAS CORRECTLY BROUGHT INTO USE, CONSISTENT WITH THE NOTIFIED CHARACTERISTICS IN THE MASTER REGISTER, BY MEANS OF THE ECHOSTAR-7 SATELLITE IN FEBRUARY 2002. DURING THE PERIOD OF OPERATION SINCE THAT TIME, THE ECHOSTAR-7 SATELLITE HAS OPERATED AT OR VERY CLOSE TO ITS NOMINAL ITU ASSIGNED ORBITAL LOCATION OF 119.0° W.

Date
22 September 2010
Our reference
AT-EZ/6449561

Our Administration finds it difficult to understand how the Bureau could deem the foregoing statement to be a satisfactory response. There is no claim that the spacecraft has ever operated at its assigned – not “nominal” assigned, but Plan-assigned – orbital location of 119.0° W.L. The term “very close” is subjective, and requires clarification. What is “very close” in the view of the United States could mean – and in light of the facts we provided from the USA records, likely does mean – something that renders the submission not compliant with the Appendix 30 and 30A Plans.

Further, the USA statement that the satellite may have been within +/- 0.05 degrees of 119.0° W.L. when it was first brought into use eight years ago would have been relevant if the satellite had been notified at that point. If it ever were true, the claim is irrelevant now because when the USA finally and belatedly notified the satellite as having had its frequency assignments brought into use, there was no USA satellite with the notified characteristics within +/- 0.05 degrees of 119.0° W.L. The USA must suffer the consequences of failing to notify its bringing into use in a time frame that is even remotely connected to when the USA claims that initial usage occurred. The USA response and our evidence seem to confirm the inaccuracy of the notification at the time it was made. We strongly believe that notifications be accurate as of the time they are made, rather than viewed as potentially accurate as of some distant point in the past (in this case more than eight years prior to notification).

Rather than conclude further inquiry, my administration is the opinion that the Bureau needs to request specifics from the USA Administration as to where the USABSS-14/EchoStar 7 satellite has precisely been since its 2002 launch; when the satellite was moved to 118.9° W.L.; when the satellite was moved to 118.8° W; and whether the satellite is being operated now in full accordance with the corresponding Plan entries. All indications are that, as we surmised in our 15 July correspondence, the USA did not have an operating satellite at 119.0° W.L. on 7 March 2010 when it notified the use of frequency assignments from that location by USABSS-14. Under these circumstances, and the cryptic and vague USA response, we believe the Bureau should either request more specific information or actually determine that the notice is defective and proceed to cancel the proposed plan modifications as directed by No. 13.6 of the Radio Regulations.

We strongly encourage the Bureau to realize the shortcoming of its “no action” determination, and move quickly and forcefully to ensure that the integrity of the Radio Regulations and the Region 2 BSS/BSS Feeder Link Plans is maintained. If this inquiry reveals (as we believe it will if detailed and truthful responses are provided) that the USA failed to correctly notify the bringing into use of the proposed frequency assignments to USABSS-14 in March 2010, the filing should be suppressed and USABSS-14 should be removed from the list of affected networks for SF_BSS5.



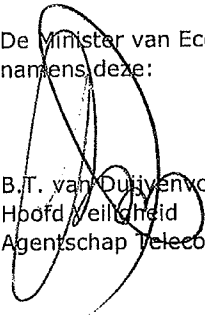
Date
22 September 2010
Our reference
AT-EZ/6449561

Thank you in advance for your prompt reconsideration of this important matter.

Please let us know whether you require any additional information from our Administration regarding the situation we have described.

Hoogachtend,

De Minister van Economische Zaken,
namens deze:


B.T. van Duijvenvoorde
Hoofd Veiligheid
Agentschap Telecom

With copy to:
Mr. M. Sakamoto, ITU, Head SNP
R. David Wilson, CEO Spectrum Five LLC

EXHIBIT B

**FCC Form 312, Response to Question 40:
Officers, Directors, and Ten Percent or Greater Shareholders**

Spectrum Five LLC (“Spectrum Five”) is a Delaware limited liability corporation. R. David Wilson and Elizabeth Wilson, both United States citizens, hold (as tenants in the entirety) 70.84 percent of the equity in Spectrum Five. Mr. and Mrs. Wilson’s address is 2445 California Street, NW, Washington, DC 20008. SkyWorks LLC holds 16.185 percent of the equity of Spectrum Five. SkyWorks LLC is located at 450 Laurel Street, Suite 1600, Baton Rouge, LA 70801. Although no single investor in Skyworks LLC individually owns more than 10 percent of the equity of Spectrum Five, Scott H. Crawford, a U.S. citizen, votes the 16.185 percent on behalf of all of the investors. No other person or entity has a ten percent or greater direct or indirect interest in Spectrum Five.

OFFICERS AND DIRECTORS

President: R. David Wilson

Board of Directors:

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Elizabeth A. Wilson
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Scott Crawford, Managing Partner
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Baton Rouge, LA 70801

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PMB 345
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Destin, Florida 32541

H. Carter Hood
2315 Tracey Place NW
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All officers and directors of Spectrum Five are United States citizens.