

ORIGINAL

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

In the Matter of

SPECTRUM FIVE, LLC

Request to Modify Its Authorization to
Serve the U.S. Market Using Broadcast
Satellite Service (BSS) Spectrum from the
114.5° W.L. Orbital Location

File Nos. SAT-MOD-20101126-00245
SAT-MOD-20101126-00269

Call Signs: S2667, S2668

FILED/ACCEPTED

SEP - 9 2011

Federal Communications Commission
Office of the Secretary

OPPOSITION OF DIRECTV ENTERPRISES, LLC

DIRECTV Enterprises, LLC (“DIRECTV”) hereby opposes the petition¹ filed Spectrum Five, LLC (“Spectrum Five”) seeking reconsideration of the International Bureau’s order denying a request to extend or waive the construction completion milestone in Spectrum Five’s authorization to provide Direct Broadcast Satellite (“DBS”) service in the United States from two Netherlands-authorized satellites, and declaring that market access grant to be null and void for failure to comply with its milestone requirements.² As the Bureau properly concluded, none of the excuses cited by Spectrum Five for its failure to meet its milestone obligations justify extension or waiver. Indeed, the Commission has rejected all of those arguments in prior cases. Denial of Spectrum Five’s request was especially appropriate given that Spectrum Five unilaterally decided to cease construction of its satellite system nearly three years ago and has shown no

¹ Petition for Reconsideration, IBFS File Nos. SAT-MOD-20101126-00245 and -00269 (filed Aug. 25, 2011) (“Spectrum Five Petition”).

² *Spectrum Five LLC*, DA 11-1252 (Int’l Bur., rel. July 26, 2011) (“*Bureau Order*”).

evidence that it has any plan for completing construction by its final launch and operate milestone in November 2012 (from which it has not requested relief). Accordingly, there is no reason for the Bureau to reconsider its decision in this proceeding.

In its previous filings in this proceeding, DIRECTV discussed at length prior cases in which the Commission rejected requests for milestone extension and/or waiver based on arguments similar to those raised by Spectrum Five here.³ The Bureau properly applied those precedents in this case, and there is no need to rehash those arguments yet again. Accordingly, DIRECTV simply incorporates them by reference.

However, there is one aspect of Spectrum Five's Petition that amplifies its previous argument in a way that justifies an amplified rebuttal. Specifically, Spectrum Five devotes much of its Petition to the assertion that the difficulties it encountered in coordinating its "tweener" system justify its failure to comply with the milestone requirement in its market access authorization.⁴ As the *Bureau Order* points out, the Commission has consistently rejected coordination difficulties as a basis for extension or waiver of milestones.⁵ Nonetheless, Spectrum Five claims that the Commission's authorization of two DBS satellites (EchoStar-11 and EchoStar-14) operating with higher power levels and different characteristics than the networks found in the Region 2 BSS Plan "radically increase[d] the potential for interference into Spectrum Five's system" such that the operational environment in which it had to coordinate "no longer exists."⁶

³ See, e.g., Petition to Deny of DIRECTV Enterprises, LLC (filed Apr. 4, 2011); Reply of DIRECTV Enterprises, LLC (filed Apr. 22, 2011).

⁴ Spectrum Five Petition at 3-13.

⁵ *Bureau Order*, ¶ 15.

⁶ Spectrum Five Petition at 6-7.

Accordingly, Spectrum Five argues, it should not be faulted for failing to proceed with construction of its system in the face of such uncertainty.

This argument cannot withstand scrutiny. First, none of the changed circumstances cited by Spectrum Five relate to DIRECTV, yet Spectrum Five has never even attempted to coordinate its system with DIRECTV's system, which enjoys ITU priority. Second, as Spectrum Five concedes, the Commission specifically conditioned its authorizations of EchoStar-11 and EchoStar-14 on the requirement that they protect Spectrum Five's assignment, such that EchoStar is "obligated as a matter of law" and Spectrum Five is "entitled to demand under the terms of its market access order and ITU rules" that those satellites reduce power or otherwise alter their operations as necessary to protect Spectrum Five in the absence of a coordination agreement.⁷ Spectrum Five dismisses these requirements, essentially arguing that the Commission will not enforce them.⁸ However, such cynicism is not a basis for failing to proceed with satellite construction, or for failing (as Spectrum Five apparently has) to even attempt to coordinate its system with EchoStar.⁹ Just because Spectrum Five has failed to live by

⁷ *Id.* at 10.

⁸ *Id.*

⁹ Spectrum Five also faults EchoStar for "blithely asserting [that] '[c]oordination with 'tweener' filings of the UK and the Netherlands will likely not need to be completed because those networks will expire if they are not successfully coordinated," a "self-serving approach" under which "EchoStar simply assumed away its obligations to coordinate with a higher priority satellite system under ITU rules, and further failed to submit a complete technical analysis to demonstrate how it would address this obligation." *Id.* at 9-10. Yet in its own market access application, Spectrum Five took a similar approach. Spectrum Five dismissed potential coordination difficulties with a UK system with higher ITU priority at the same 114.5° W.L., stating that they "may not be brought into use before it expires, in which case it would not be an impediment to later proposed modifications, such as for the Spectrum Five satellites." Spectrum Five, LLC, Petition for Declaratory Ruling, IBFS File No. SAT-LOI-20050312-00062/63, Exhibit 1 to Technical Appendix at 4 ("Spectrum Five Application"). Similarly, despite DIRECTV's protests, Spectrum Five refused to provide an analysis to demonstrate how it would operate without causing interference to existing U.S.-licensed DBS satellites already in operation. See *Spectrum Five, LLC*, 21 FCC Rcd. 14023, ¶¶ 28-31 (Int'l Bur. 2006).

the conditions in its authorization is no basis for assuming that others will proceed (or be allowed to proceed) in the same fashion.

Third, Spectrum Five’s claim that its operations would be “severely compromised by EchoStar’s operations” is flatly inconsistent with the position it took with respect to the interference its own system would cause to DIRECTV and EchoStar systems already in operation. Spectrum Five’s market access application shows that, as measured by the standard metric of overall equivalent protection margin (“OEPM”), its system would degrade the reference situation for DIRECTV and EchoStar by well over 10 dB at many test points.¹⁰ Spectrum Five nonetheless argued that “any levels of interference will be manageable and coordination with affected parties will be readily achievable.”¹¹ By contrast, EchoStar-11 and EchoStar-14 would impose far less upon Spectrum Five, with almost all OEPM reductions less than 1 dB and none higher than 5.3 dB.¹² Yet Spectrum Five characterizes this lower OEPM reduction as a “radical” increase that will “severely compromise[]” its operations. The Commission should not overlook this self-serving shift in view as it assesses the coordination challenges allegedly faced by Spectrum Five.

* * *

The Bureau properly applied Commission policy and precedent in denying Spectrum Five’s request and declaring its authorization null and void. Accordingly, the petition for reconsideration should be denied.

¹⁰ See Spectrum Five Application, Exhibit 1 to Technical Appendix at Table 2.

¹¹ *Id.*, Narrative at 6.

¹² See Application for Minor Modification of DBS Authorization, Launch and Operating Authority for EchoStar-14, IBFS File No. SAT-LOA-20090518-00053, Annex 1 to Appendix I; Application to Make Minor Modification to DBS Authorizations and for Launch and Operating Authority for EchoStar-11, IBFS File No. SAT-LOA-20070611-00082, Annex 1 to Appendix 1 to Technical Annex.

Respectfully submitted,

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September 9, 2011

CERTIFICATE OF SERVICE

I certify that on this 9th day of September 2011, I have caused a true and correct copy of this Opposition to be served by U.S. mail, postage prepaid, upon:

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