

January 13, 2011

**BY ELECTRONIC FILING**

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

Re: Petition of Spectrum Five LLC  
IBFS File No. SAT-MOD-20101126-00245

Dear Ms. Dortch:

In the above referenced proceeding, Spectrum Five LLC (“Spectrum Five”) has requested a declaratory ruling that would extend or waive a construction milestone associated with its authorization to provide Direct Broadcast Satellite (“DBS”) service from a “tweener” orbital location at 114.5° W.L.<sup>1</sup> Specifically, Spectrum Five filed an application on November 26, 2010 seeking relief from the requirement that it complete construction of its first satellite by November 29, 2010. Although that request has not yet been accepted for filing by the Commission, DIRECTV Enterprises, LLC (“DIRECTV”) submits this letter to identify two critically relevant matters that Spectrum Five should be required to address before its request is processed further.

As Spectrum Five recognizes, the first factor traditionally considered by the Commission in evaluating a request for extension of a DBS due diligence milestone is “those efforts made and not made.”<sup>2</sup> The Petition discusses a wide range of factors that it claims should explain “those efforts . . . not made” and excuse its failure to meet the construction milestone. However, it is entirely silent on the other side of the coin: those efforts actually made to comply with the milestone by completing construction of its first satellite. In order to correct this glaring deficiency and provide the Commission with a proper record for assessing its request, Spectrum Five should be required to submit information on two factual questions.

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<sup>1</sup> See Spectrum Five LLC, 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, IBFS File No. SAT-MOD-20101126-00245 (filed Nov. 26, 2010) (“Petition”).

<sup>2</sup> See *id.* at 7 (citing *United States Satellite Broadcasting Co.*, 7 FCC Rcd. 7247, 7252 (Int’l Bur. 1992)).

First, Spectrum Five should explain in detail the status of its first satellite. Presumably, the contract submitted to satisfy its first milestone provided for completion of that satellite before the November 29, 2010 date required under its authorization.<sup>3</sup> Given that Spectrum Five did not file its request until three days before construction was to have been completed, one would expect that its satellite would be virtually (if not actually) ready for delivery. If that is not the case, the Commission is entitled to know what efforts were made (and not made) in constructing the satellite and how far from completion it is at present.<sup>4</sup>

Second, if (as indicated in the Petition) construction of that first satellite is not yet complete, presumably Spectrum Five's construction contract with Space Systems/Loral ("SS/L") has not been performed as submitted to the Commission. It could have been breached (*e.g.*, by Spectrum Five's failure to pay or SS/L's failure to deliver the satellite on time), or it could have been modified by the parties to reflect a new delivery and payment schedule. In either case, the status of that contract (including any amendments thereto), the extent of any payments submitted (or not submitted) thereunder, and other aspects of the parties' performance thereunder are highly probative of "those efforts made and not made" by Spectrum Five. Accordingly, the Commission should require Spectrum Five to disclose this information as a prerequisite to proceeding further in processing its request.<sup>5</sup>

To be clear, DIRECTV can see no basis for granting the relief requested by Spectrum Five based on its existing petition, and intends to present its views on the merits of the Petition if and when such comments are appropriate. But in order for the Commission to have a full record

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<sup>3</sup> The public record includes only a redacted version of this contract in which the delivery dates for all items have been excised. See Letter from Todd M. Stansbury to Marlene H. Dortch, IBFS File Nos. SAT-LOI-20050312-00062 and -00063 (Nov. 28, 2007).

<sup>4</sup> In order to ensure specific and comprehensive responses, the Commission should require Spectrum Five to provide answers to questions such as:

- Has the Communications Panel Integration been completed and, if so, when?
- Has the Communications Panel been mated to the Bus Module and, if so, when?
- Has Antenna Range Testing been completed and, if so, when?
- Has Spacecraft Level Vibration testing been completed and, if so, when?
- Has Spacecraft Thermal Vacuum Testing been completed and, if so, when?
- Have Final Integrated System Test begun?

<sup>5</sup> Here again, the Commission should require answers to specific questions such as:

- How much of the Payment Plan in Exhibit E of the SS/L contract has been performed to date?
- Has the Payment Plan in Exhibit E of the SS/L contract been revised and, if so, when and how?
- Has the Delivery Schedule or any of the Deliverable Items in Article III of the SS/L contract been revised and, if so, when and how?
- Have launch services been procured as contemplated in Article III of the SS/L contract and, if so, what are those arrangements and when were they made?

**WILTSHIRE & GRANNIS LLP**

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upon which to determine whether to accept that Petition, Spectrum Five should be required to submit information on the two highly probative factual issues discussed above.

Respectfully submitted,

*/s/*

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cc: Robert Nelson  
Steve Duall  
Kathryn Medley  
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Chip Fleming  
David Wilson (President, Spectrum Five LLC)