

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
EchoStar Satellite Operating Corporation) File No. SAT-MOD-20140623-00074
) Call Sign S2232
Application for Modification of License for the)
EchoStar 6 Satellite to Extend Termination Date)

OPPOSITION TO APPLICATION FOR REVIEW

I. INTRODUCTION

EchoStar Satellite Operating Corporation (with its affiliates, “EchoStar”) opposes Spectrum Five LLC’s (“Spectrum Five”) application for review (“Application for Review”) of the International Bureau’s (“Bureau”) *EchoStar Extension Order*¹ granting the above-captioned application (“Extension Application”) to extend the term of the EchoStar 6 satellite license. The *EchoStar Extension Order* properly rejected Spectrum Five’s claims and concluded that granting the requested license term extension is consistent with FCC precedent and serves the public interest by facilitating development of new services to the Atlantic Ocean region.²

Spectrum Five, as an initial matter, lacks the requisite standing to seek review of the *EchoStar Extension Order*. In any event, its claims lack merit and offer no basis for reversal of the order. Despite more than two years of filing numerous, unsuccessful challenges (with both the courts and the Commission) against EchoStar 6’s operations at 96.2° W.L.,³ Spectrum Five

¹ See *EchoStar Satellite Operating Corporation*, Order and Authorization, DA 15-507 (IB 2015) (“*EchoStar Extension Order*”).

² See *id.* ¶ 1.

³ See *EchoStar Satellite Operating Company*, Order and Authorization, 28 FCC Rcd 4229 (IB 2013) (“*STA Grant*”), *stay denied*, 28 FCC Rcd 5475 (IB 2013), *review denied*, 28 FCC Rcd 10412 (2013) (“*STA Affirmance*”), *appeal dismissed*, *Spectrum Five LLC v. FCC*, 758 F.3d 254 (2014).

continues to abuse the regulatory process by rehashing claims that have been properly rejected and that remain subject to FCC reconsideration in another proceeding.⁴ Rescinding Commission grant of the EchoStar 6 license term extension would disserve the public interest by undermining satellite fleet management and flexibility, allowing scarce spectral resources and valuable satellite assets to go unused, adversely impacting existing satellite operations, introducing regulatory uncertainty regarding the FCC’s established satellite licensing policies, and depriving consumers of potential new services. It also would be contrary to FCC precedent authorizing license term extensions consistent with a satellite’s expected end of life. Accordingly, the Commission should dismiss or deny Spectrum Five’s application for review.

II. SPECTRUM FIVE HAS NO STANDING TO SEEK REVIEW, AND ITS APPLICATION FOR REVIEW IS PROCEDURALLY DEFECTIVE

As a threshold matter, Spectrum Five has no standing to seek review of the *EchoStar Extension Order*. Moreover, its application for review is procedurally defective because it: (i) impermissibly alleges a new basis for standing that is unrelated to any changed circumstances or previously unknown facts; (ii) lacks the requisite affidavit from a qualified radio engineer to support its harmful interference claim; and (iii) effectively seeks full Commission review based upon new questions of fact or law not previously raised in this proceeding.

Section 1.115(a) of the Commission’s rules permits only a “person aggrieved” to file an application for review.⁵ Additionally, Section 1.115(c) precludes grant of an application for

⁴ See *EchoStar Satellite Operating Corporation*, Order and Authorization, 29 FCC Rcd 9615, ¶ 19 (IB & OET 2014) (“*EchoStar Modification Order*”), recon. pending Spectrum Five (filed Sept. 10, 2014).

⁵ 47 C.F.R. § 1.115(a). To demonstrate standing under Section 1.115(a) of the Commission’s rules and Section 309(d) of the Communications Act of 1934, as amended (47 U.S.C. § 309(d)), a party must demonstrate both a “direct injury” and a “causal link between the claimed injury and the challenged action.” See *Applications of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, 27 FCC Rcd 4423, ¶ 8 (2012). To demonstrate a causal link, a petitioner “must establish that the injury can be traced to the challenged action and the injury would be prevented or redressed by the relief requested.” *Id.*

review that relies on new questions of fact or law upon which the Bureau has been afforded no opportunity to pass.⁶

Spectrum Five's alleged standing has long been premised upon claims that EchoStar 6's authorized operations at 96.2° W.L. allowed the U.K. filing for the BERMUDASAT-1 network to be brought into use and entered into the International Telecommunication Union's ("ITU") Master Register, thus blocking any potential 12/17 GHz Direct Broadcast Satellite ("DBS") service that Spectrum Five may or may not be authorized in the future to provide to the United States from the 95° W.L. orbital location.⁷ The U.S. Court of Appeals for the D.C. Circuit, however, soundly rejected these claims and ruled that Spectrum Five has shown no redressable harm, and thus no standing, to oppose the FCC's grant of temporary authorization to move and operate EchoStar 6 at 96.2° W.L.⁸

Since the judicial dismissal of its claims for lack of standing, Spectrum Five has proffered an entirely new standing claims based upon (i) alleged harmful interference from its theoretical reverse-band 17/24 GHz broadcast satellite service ("reverse-band") satellite at 95.15° W.L. to the EchoStar 6 satellite; and (ii) its "frustrated" ability to raise funds for its reverse-band satellite resulting from EchoStar 6's authorized operations at 96.2° W.L.⁹ These standing claims were raised for the first time less than a year ago in another proceeding, and under Section

⁶ 47 C.F.R. § 1.115(c).

⁷ See, e.g., Spectrum Five Petition to Deny, File Nos. SAT-MOD-20130227-00026 *et al.*, at 14-15 (June 3, 2013); Spectrum Five Petition to Deny Applications for Renewal of Special Temporary Authority, File Nos. SAT-STA-20130510-00067 *et al.*, at 2, 4 (May 22, 2013); see also Supplemental Opposition of Spectrum Five, File Nos. SAT-STA-20130510-00067 *et al.* (July 15, 2014) (providing no new or additional basis for standing).

⁸ See *Spectrum Five*, 758 F.3d at 264-65 (concluding that there is "no causal link" and no showing that vacatur of the FCC's grant of temporary authorization is likely to redress Spectrum Five's claimed injury, and dismissing Spectrum Five's claims for lack of standing).

⁹ See Spectrum Five Application for Review at 23-25; see also Spectrum Five Petition for Reconsideration and Request for Referral of the Petition to the Full Commission, File Nos. SAT-MOD-20130227-00026 *et al.* (Sept. 10, 2014) ("Petition for Recon").

1.115(c) of the FCC's rules, the Bureau must be afforded an opportunity to review them before they may be raised in an application for full Commission review.

Even if the Commission decides to entertain the new standing claims, Spectrum Five has shown neither direct injury nor a causal link between the claimed injury and grant of the Extension Application. Spectrum Five's claimed injuries consist of a frustrated fundraising ability and a hypothetical modification of its reverse-band license that the Commission may or may not adopt in the future to provide interference protection to EchoStar 6. Spectrum Five is not required to launch its reverse-band satellite until August 2016, and the Commission to date has not found that Spectrum Five has met any milestone requirements.¹⁰ Based upon its prior history of failing to meet satellite milestone requirements,¹¹ whether or not Spectrum Five ultimately will launch and operate a reverse-band satellite at 95.15° W.L., or any satellite for that matter, remains to be seen. Further, its frustrated fundraising ability may be more directly attributable to its 10-year history of failing to launch or operate a single satellite, rather than to speculative investor concerns regarding EchoStar 6's operations at 96.2° W.L. Thus, any harm to Spectrum Five's planned reverse-band satellite or to its fundraising ability is purely theoretical, remote, and precisely the type of speculative harm that both the court and the Commission have found to result in Spectrum Five's lack of standing.¹²

In any event, the Bureau decisively found that EchoStar's commitments to accept interference from Spectrum Five's planned reverse-band BSS satellite "resolve any question

¹⁰ See *95 License Subsidiary LLC*, Stamp Grant, File Nos. SAT-LOA-20090807-00084, SAT-AMD-20100528-00114, SAT-AMD-20100729-00170, SAT-AMD-20110503-00084 (granted Aug. 30, 2011).

¹¹ For example, Spectrum Five's authority to access the U.S. market from two satellites it proposed to operate at the 114.5° W.L. orbital location was revoked in 2011 after it ceased all construction activities on the spacecraft. See *Spectrum Five LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10448, ¶ 1 (IB 2011).

¹² *Spectrum Five*, 758 F.3d at 264-65; *STA Affirmance* ¶ 17.

concerning prejudice to Spectrum Five’s U.S. licensed satellite from operations of EchoStar 6.”¹³ The full Commission similarly agreed that “any significant concern about potential interference to other operational satellites or planned U.S.-licensed satellites [has been removed].”¹⁴

Consequently, because Spectrum Five has shown no direct harm and no causal link, it has no standing to object, and its Application for Review should be dismissed on this basis alone.

III. SPECTRUM FIVE OFFERS NO BASIS FOR FCC REVIEW

Even on its merits, the Application for Review provides no basis for full Commission review here and should be denied. Specifically, the Application for Review fails to demonstrate any of the factors warranting Commission review under Section 1.115(b)(2) of the FCC’s rules.¹⁵

A. The Bureau Properly Found that EchoStar Sufficiently Addressed the Power Level and Antenna Pointing Issues

The *EchoStar Extension Order* properly found that EchoStar took sufficient steps to address the power level and antenna pointing issues, and that these issues do not warrant denial of a license term extension.¹⁶ Spectrum Five disputes the Bureau’s findings, but cites no FCC rule, precedent, or policy requiring denial of satellite operating authority under similar circumstances. Notably, EchoStar has submitted measurement data and additional evidence demonstrating its compliance with the FCC’s power level, antenna pointing, and antenna pattern

¹³ *STA Grant* ¶ 13.

¹⁴ *STA Affirmance* ¶ 13.

¹⁵ See 47 C.F.R. § 1.115(b)(2) (factors warranting FCC review include a conflict with statute, rule, precedent, or policy; a previously unresolved question of law or policy; application of a precedent or policy that should be overturned or revised; an erroneous finding of material fact; and prejudicial procedural error).

¹⁶ See *EchoStar Extension Order* ¶ 6.

requirements.¹⁷ Spectrum Five, on the other hand, has offered no measurement data or other evidence to show that these issues have not been rectified.¹⁸

B. The Bureau Properly Reaffirmed Prior Public Interest Findings

Both the full Commission and the Bureau have concluded that EchoStar 6's operations at 96.2° W.L. serve the public interest.¹⁹ The *EchoStar Extension Order* once more reaffirmed that EchoStar 6's operations "will serve the public interest by continuing to facilitate possible development of new services to the Atlantic Ocean region."²⁰

Further, EchoStar has been working with a potential customer in creating and configuring a network that will use the EchoStar 6 satellite to deliver an IP-based video service to maritime mobile terminals. EchoStar expects to commence testing of the service once the remaining network equipment is delivered from third-party vendors. Thus, the Commission should continue to reject Spectrum Five's public interest objections as unsubstantiated and repetitive.²¹

IV. CONCLUSION

As demonstrated above, Spectrum Five has failed to establish standing or to justify full Commission review of the *EchoStar Extension Order*. Rescinding EchoStar 6's authorization to

¹⁷ See Letter from Jennifer A. Manner, Vice President of Regulatory Affairs, EchoStar, to Marlene H. Dortch, Secretary, FCC., IBFS File Nos. SAT-MOD-20130227-00026 *et al.* (Dec. 17, 2014); Letter from Jennifer A. Manner, Vice President of Regulatory Affairs, EchoStar, to Marlene H. Dortch, Secretary, FCC., IBFS File Nos. SAT-MOD-20130227-00026 *et al.* (Nov. 20, 2014).

¹⁸ See Spectrum Five Application for Review at 10-18. In any event, as the Bureau correctly noted, the *EchoStar Extension Order* is not intended to prejudge the issue of whether the alleged technical rule violation warrants a finding that EchoStar is unqualified to hold a license. That issue is subject to Spectrum Five's pending Petition for Recon, and under Section 1.115(c) of the FCC's rules, the Bureau must be afforded an opportunity to address the issue before it may be raised in an application for full Commission review. See 47 C.F.R. § 1.115(c).

¹⁹ See, e.g., *STA Affirmance* ¶ 9; *STA Grant* ¶ 9.

²⁰ *EchoStar Extension Order* ¶ 1.

²¹ Spectrum Five's public interest objections also are subject to its pending Petition for Recon, and under Section 1.115(c) of the FCC's rules, the Bureau must be afforded an opportunity to address the issue before it may be raised in an application for full Commission review. See 47 C.F.R. § 1.115(c).

continue operating at 96.2° W.L. would reward anti-competitive regulatory strategies, severely limit the fleet management and service flexibility typically accorded to satellite licensees, deprive consumers of valuable new services, and foreclose the pursuit of a viable international development opportunity by a U.S.-licensed satellite operator. Accordingly, the Commission should dismiss or deny the Application for Review and reject Spectrum Five's ongoing abuse of the regulatory process to prevent deployment of service to the public.

Respectfully submitted,

**ECHOSTAR SATELLITE OPERATING
CORPORATION**

By: /s/ Jennifer A. Manner
Jennifer A. Manner
Vice President of Regulatory Affairs

June 19, 2015

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that on June 19, 2015, a copy of the foregoing Opposition is being sent by electronic mail and first-class, U.S. Mail, postage paid, to the following:

John Thorne
Scott H. Angstreich
Daniel V. Dorris
Kellogg, Huber, Hansen, Todd,
Evans & Figel, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

/s/ Theresa Rollins
Theresa Rollins