

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

MAR 26 2007

Federal Communications Commission  
Office of the Secretary

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*In the Matter of* )

SES AMERICOM, INC. )

Petition for Declaratory Ruling )  
To Serve the U.S. Market Using )  
BSS Spectrum from the 105.5° W.L. )  
Orbital Location )  
\_\_\_\_\_ )

File No. ~~SAT-PPL-20070129-00024~~

S2731      SAT-PDR-20070129-00024      IB2007000284  
SES Americom, Inc.  
AMC-20

**OPPOSITION OF DIRECTV ENTERPRISES, LLC**

DIRECTV Enterprises, LLC (“DIRECTV”) hereby opposes the above-captioned Petition for Declaratory Ruling (“Petition”)<sup>1</sup> submitted by SES Americom, Inc. (“SES”) seeking authority to provide Direct Broadcast Satellite (“DBS”) service in the United States from a foreign-licensed satellite operating with half the current DBS orbital spacing. DIRECTV opposed SES’s original version of this petition – which was dismissed<sup>2</sup> – and the resubmitted version has only raised additional bases for denial.

The Petition is but one of several proposals that would create new orbital locations for providing Broadcast Satellite Service (“BSS”) from orbital locations spaced less than nine degrees from slots currently used to provide such service to tens of millions

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<sup>1</sup> DIRECTV notes that this proceeding has been given a “PPL” file number denoting a request for inclusion of a satellite on the Commission’s Permitted List. However, the Commission has not yet made the Permitted List available for DBS satellites. *See, e.g., Telesat Canada*, 17 FCC Rcd. 25287, 25288 (2002) (Permitted List applies to communications with routine earth stations operating in the conventional C- and Ku-bands only). Accordingly, this proceeding should have been given a “PDR” designation denoting a request for declaratory ruling. To the extent the assignment of a “PPL” file number indicates anything other than a clerical error, DIRECTV objects to consideration of the satellite proposed by SES for inclusion on the Permitted List.

<sup>2</sup> *See* Letter from Robert G. Nelson to Nancy J. Eskenazi, 21 FCC Rcd. 14020 (2006).

of consumers in the United States. As DIRECTV has demonstrated in other proceedings, however, implementation of such “tweener” operations as currently proposed by SES would have a significant adverse impact on current and future services available from the BSS locations allocated to the United States under the International Telecommunications Union’s (“ITU”) Region 2 Plan. Moreover, the Petition does not satisfy the Commission’s application requirements for new BSS proposals. Thus, the Petition should be dismissed on both substantive and procedural grounds.

### *Discussion*

SES requests authority to provide BSS service in the United States from a satellite licensed by Gibraltar operating at the 105.5° W.L. slot. As DIRECTV has documented in other proceedings, proposals for such tweener systems are substantively unworkable, gravely detrimental to the operations and growth of U.S. DBS providers, and contrary to the public interest.<sup>3</sup> Rather than repeating all of those arguments and technical showings, DIRECTV hereby incorporates them by reference.<sup>4</sup> Nonetheless, a few observations specific to the current Petition are in order, and are made below.

First, although SES claims that its resubmitted Petition “is materially the same as the Petition that SES Americom has had before the Commission since 2002,”<sup>5</sup> that is not

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<sup>3</sup> DIRECTV made numerous filings in response to SES’s original tweener application (FCC File No. SAT-PDR-20020425-00071, the “Original Petition”) and in response to the notice of proposed rulemaking on tweener issues (IB Docket No. 06-160).

<sup>4</sup> DIRECTV hereby incorporates the following filings by reference: Comments of DIRECTV, Inc.; IB Docket No. 06-160 (Dec. 12, 2006); Reply Comments of DIRECTV, Inc., IB Docket No. 06-160 (Jan. 25, 2007); Opposition of DIRECTV, Inc., FCC File No. SAT-PDR-20020425-00071 (June 17, 2002); Letter from William M. Wiltshire to Marlene H. Dortch, FCC File No. SAT-PDR-20020425-00071 (Sept. 8, 2004); and Letter from William M. Wiltshire to Marlene H. Dortch, FCC File No. SAT-PDR-20020425-00071 (Aug. 24, 2006).

<sup>5</sup> Petition at 4.

the case. For example, the maximum power level proposed by SES in the Petition is *more than double* what it proposed in its Original Petition.<sup>6</sup> This change will exacerbate all of the interference concerns originally expressed by DIRECTV and make concluding coordination even less likely than it was before. To illustrate this point, the table below shows that interference into DIRECTV 4S under the new Petition is as much as 10 dB worse than under the Original Petition in the nation’s top ten designated market areas – which can hardly be considered “materially the same.”

Rank	DMA	C/I Based on Original Petition, dB	C/I Based on Current Petition, dB	Additional C/I Degradation, dB
1	New York	16.1	14.2	1.9
2	Los Angeles	22.9	13.4	9.5
3	Chicago	15.7	14.2	1.5
4	Philadelphia	16.3	13.9	2.4
5	San Francisco	23.0	12.9	10.1
6	Boston	19.6	15.0	4.6
7	Dallas	15.9	13.0	2.9
8	Washington. DC	16.8	13.7	3.1
9	Detroit	15.7	14.2	1.5
10	Atlanta	18.3	14.8	3.5

As this change further confirms, the Commission should be under no illusion that SES’s proposed tweener system could coexist with U.S. DBS systems without disrupting service to millions of existing subscribers across the country.

SES will undoubtedly contend (as it did in the *Tweener NPRM* proceeding<sup>7</sup>) that this doubling of proposed power has no significance because “every satellite application

<sup>6</sup> Compare Original Petition, Schedule S at 4 (maximum EIRP of 54 dBW) with Petition, Schedule S at S7 (maximum EIRP of 57.3 dBW).

<sup>7</sup> *Amendment of the Commission’s Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, 21 FCC Rcd. 9443 (2006) (“*Tweener NPRM*”).

is just a starting point for coordination, and not a definition of planned operations.”<sup>8</sup>

While that may be true with respect to coordinating satellite filings made at the ITU, it most certainly is not the case for an application seeking a space station license from the Commission. Section 25.114(b) of the Commission’s rules specifically provides that an application for satellite authorization “must constitute a concrete proposal for Commission evaluation.”<sup>9</sup> Thus, a tweener application, or any other application for a satellite license submitted to the Commission, is not just some opening gambit designed to position the applicant for future negotiations. Rather, such an application must represent a well-defined and thoroughly documented proposal for evaluation by the Commission and other interested or potentially affected parties. The salient question under the Commission’s rules is whether the system *as proposed* in the application – and not as it might be revised in the future as a result of coordination or otherwise – meets the Commission’s technical requirements and would serve the public interest if granted. SES’s misconception of the licensing process betrays a fundamental flaw in its Petition.

Second, this resubmitted Petition requests a qualitatively different type of authorization pending adoption of rules in the ongoing *Tweener NPRM* proceeding. Citing the *Tweener NPRM* itself, DIRECTV has demonstrated in other proceedings (including the Original Petition proceeding) that, unless and until the Commission adopts new rules for this band, the International Bureau lacks authority to grant a tweener application unless the proposed system (1) would not exceed the interference limits established in Annex 1 to Appendices 30 and 30A of the ITU Radio Regulations, or (2)

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<sup>8</sup> Reply Comments of SES Americom, Inc., IB Docket No. 06-160, at 9 (dated Jan. 25, 2007).

<sup>9</sup> 47 C.F.R. § 25.114(b).

has completed coordination with affected U.S. systems.<sup>10</sup> As SES candidly admits, its proposed system exceeds the Annex 1 interference limits and therefore requires coordination with U.S. DBS networks.<sup>11</sup> Indeed, SES's own technical analysis vividly demonstrates the magnitude of the potential interference problem its proposal would create for operational U.S. DBS systems. Table 9 of the Petition's Technical Appendix lists the maximum overall equivalent protection margin ("OEPM") degradation for each affected DBS satellite network. As a point of reference, the coordination trigger in Annex 1, Section 2 (MSPACE) used by the ITU to analyze satellite interference in Region 2 is an OEPM degradation of 0.25 dB, which represents a 6% increase in the overall noise of the affected system. The data in the Petition show that a number of U.S. filings at the 101° W.L., 110° W.L., and 119° W.L. orbital locations would experience much higher levels of degradation – up to 7.8 dB, which represents an increase of up to 500% or more in the overall noise level of these affected systems.<sup>12</sup> In these circumstances, there is no reason to believe that the two systems could co-exist without causing severe interference to millions of existing DIRECTV subscribers. Because the system proposed by SES would substantially exceed Annex 1 limits and has not yet been coordinated, the Petition must be denied.

In the Petition, SES cites the Bureau's decision to grant the tweener application filed by Spectrum Five, LLC as precedent for granting its Petition as well.<sup>13</sup> In that

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<sup>10</sup> See, e.g., Letter from William M. Wiltshire to Marlene H. Dortch, File No. SAT-PDR-20020425-00071 (dated Aug. 24, 2006) (citing *Tweener NPRM*, ¶ 29). The arguments set forth in this letter are hereby incorporated by reference herein.

<sup>11</sup> See, e.g., Petition at 8.

<sup>12</sup> See Petition, Technical Appendix at 11 (Table 9).

<sup>13</sup> See Petition at 7-9 (citing *Spectrum Five, LLC*, 21 FCC Rcd. 14023 (2006) ("*Spectrum Five Order*").

order, the Bureau authorized Spectrum Five to operate its tweener system within the Annex 1 limits, and to exceed those limits only to the extent it could reach agreement with affected U.S. systems. SES encourages the Bureau to issue a similar authorization in this proceeding. As DIRECTV has argued in its application for review of the *Spectrum Five Order*,<sup>14</sup> however, this approach has an obvious flaw: *it does not comply with the Commission's rules.*

Specifically, Section 25.114(d)(13)(i) requires that an applicant whose DBS system parameters differ from the ITU's Region 2 Plan must provide a technical showing sufficient to demonstrate that "the proposed system could operate satisfactorily if all assignments in the [Region 2 Plan] were implemented." As the Commission explained in the *Tweener NPRM*, "[t]his showing is intended to demonstrate that the proposed system will meet its performance objectives given the Region 2 Plan assignments."<sup>15</sup> SES patently has not made such a showing to the extent it requests an authorization – similar to that issued to Spectrum Five – that would allow its tweener system to operate within the Annex 1 limits. All of the technical analysis provided in the Petition relates to a system that would significantly exceed the Annex 1 limits. There is no similar information provided with respect to proposed operations that would comply with Annex 1. As a result, neither the Commission nor DIRECTV has the information necessary to evaluate whether SES could operate satisfactorily within the Annex 1 limits. Accordingly, the Petition fails to satisfy the requirement established in Section

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<sup>14</sup> See Application for Review of DIRECTV Enterprises, LLC, File Nos. SAT-LOI-20050312-00062 and -00063 (filed Dec. 29, 2006).

<sup>15</sup> *Tweener NPRM*, ¶ 29.

25.114(d)(13)(i), and must be denied – notwithstanding the flawed precedent cited by SES.

\* \* \*

DIRECTV does not oppose the entry of a new source of competition in the multichannel video programming distribution market – though SES apparently does not itself intend to offer such services. Indeed, SES has already leased “the entire communications capacity (including all spare capacity)” on its proposed tweener at the 105.5° W.L. orbital location to EchoStar – foreclosing the opportunity for new entry from that slot.<sup>16</sup> But there are other means to achieve such entry that would not place at risk the substantial investment that existing U.S. DBS operators have made in their systems or frustrate the expectations of U.S. consumers that such systems will, like their cable competitors, continually improve their video offerings. For example, the Commission has allocated spectrum for BSS service in the “expansion” frequencies at 17 GHz,<sup>17</sup> and DIRECTV has proven the viability of the Ka band for DTH services. Under these circumstances, and for the reasons stated herein, DIRECTV submits that the public interest would not be served by granting the Petition, and requests that the Commission deny it.

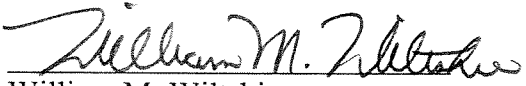
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<sup>16</sup> See Satellite Service Agreement for AMC-14, Article 1.A (Aug. 13, 2003) (available at <http://www.sec.gov/Archives/edgar/data/1001082/000103570403000773/d10018exv10w2.txt>).

<sup>17</sup> See *Establishment of Policies and Service Rules for the Broadcasting Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Broadcasting Satellite Service Operating Bi-directionally in the 17.3-17.7 GHz Frequency Band*, 21 FCC Rcd. 7426 (2006).

Respectfully submitted,

DIRECTV ENTERPRISES, LLC

By:   
William M. Wiltshire  
Michael D. Nilsson

HARRIS, WILTSHIRE & GRANNIS LLP  
1200 Eighteenth Street, N.W.  
Washington, DC 20036  
202-730-1300

Dated: March 26, 2007

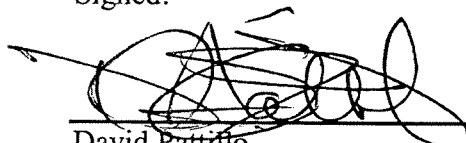


ENGINEERING CERTIFICATION

The undersigned hereby certifies to the Federal Communications Commission as follows:

- (i) I am the technically qualified person responsible for the engineering information contained in the foregoing Opposition,
- (ii) I am familiar with Part 25 of the Commission's Rules, and
- (iii) I have either prepared or reviewed the engineering information contained in the foregoing Opposition, and it is complete and accurate to the best of my knowledge and belief.

Signed:

  
\_\_\_\_\_

David Pattiffo

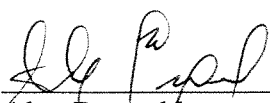
March 26, 2007

\_\_\_\_\_  
Date

*CERTIFICATE OF SERVICE*

I hereby certify that, on this 26<sup>th</sup> day of March, 2007, a copy of the foregoing  
Opposition of DIRECTV Enterprises, LLC was served by hand delivery upon:

Peter A. Rohrbach  
Karis A. Hastings  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, N.W.  
Washington, DC 20004

  
\_\_\_\_\_  
Alex Reynolds