

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

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-PDR-20070129-00024

FILED/ACCEPTED

APR - 5 2007

Federal Communications Commission
Office of the Secretary

RESPONSE OF SES AMERICOM, INC.

SES Americom, Inc. (“SES Americom”) hereby responds to the Opposition of DIRECTV Enterprises, LLC (“DIRECTV Opposition”) to SES Americom’s above-captioned Petition for Declaratory Ruling seeking authority to provide Direct Broadcast Satellite (“DBS”) services to the U.S. market from 105.5° W.L. using a foreign-licensed satellite (the “AMC-20 Petition”).¹ As explained in the AMC-20 Petition, grant of market access is consistent with Commission precedent, will permit introduction of new DBS services, and promotes more efficient use of DBS spectrum. AMC-20 Petition at 1-4. In its Opposition, DIRECTV presents no legitimate objection to immediate grant of the AMC-20 Petition.

¹ The file number of this proceeding has been corrected in the IBFS system to reflect that this matter involves a Petition for Declaratory Ruling Cf. DIRECTV Opposition at 1 n.1.

INTRODUCTION

The AMC-20 Petition is a resubmission of the request to provide U.S. DBS services from 105.5° W.L. that SES Americom originally submitted *five years ago*. The filing seeks authority for the same spectrum at the same orbital location, but has been updated to reflect current technology and to provide coverage of Alaska, Hawaii, and Puerto Rico in addition to the continental United States and certain British Overseas Territories in the Caribbean. *See* AMC-20 Petition at 1-2 & n.1.

In the intervening period, the Commission has initiated a rulemaking regarding DBS licensing that includes consideration of issues relating to DBS operations at reduced orbital spacing. In doing so, the Commission expressly determined that applications to serve the U.S. from locations at reduced spacing were eligible for Commission action pending adoption of new rules.² Acting on this clear authority, the International Bureau has granted two such applications, a request by Spectrum Five for U.S. market access using Netherlands-licensed satellites at 114.5° W.L., and an EchoStar license application for 86.5° W.L.³

² Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States, IB Dkt No. 06-160, Report No. SPB-196, FCC 06-120, rel. Aug. 18, 2006 ("*Reduced Spacing NPRM*") at ¶ 21 ("[G]iven our general statutory authority under Sections 308 and 309 of the Communications Act, coupled with the application filing requirements and rules regarding non-interference showings, we may process the existing DBS applications provided that they are complete and consistent with the public interest, convenience and necessity.") (footnote omitted).

³ *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 and Authorization*, DA 06-2439, 21 FCC Rcd 14023 (IB 2006) ("*Spectrum Five Order*"); *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*, DA 06-2440, 21 FCC Rcd 14045 (IB 2006) ("*EchoStar 86.5 Order*"). DIRECTV has filed an application for review of the *Spectrum Five Order*, and review of the *EchoStar 86.5 Order* has been sought by Telesat Canada.

The AMC-20 Petition fully complies with applicable Commission requirements and demonstrates significant public interest benefits. SES Americom is in the same shoes as Spectrum Five and EchoStar. Accordingly, SES Americom is entitled to similar treatment: grant of authority to serve the U.S. subject to coordination with other affected networks.

In its Opposition, DIRECTV fails to identify any grounds for the Commission to withhold that same authority from SES. Instead, DIRECTV restates arguments that were raised, considered, and rejected in the Spectrum Five and EchoStar proceedings. The Commission should quickly reaffirm its previous findings and grant the AMC-20 Petition at once, particularly in light of the extensive delay SES Americom has already experienced. The Commission should expeditiously issue the requested declaratory ruling to authorize SES Americom to introduce new DBS capacity for U.S. consumers.

I. GRANT OF THE AMC-20 PETITION SUBJECT TO COORDINATION IS CONSISTENT WITH COMMISSION RULES AND PRECEDENT

The technical information submitted in support of the AMC-20 Petition complies with Commission requirements and justifies grant of market access for AMC-20 subject to the outcome of coordination with incumbent U.S. DBS providers. SES Americom provided a full description of the proposed spacecraft and supplied copies of the ITU's analysis of the underlying United Kingdom USAT-S1 filing in reference to the interference limits in Annex 1 to Appendices 30 and 30A. AMC-20 Petition, Technical Appendix at 7-8 & Annex 3. SES Americom acknowledged that coordination with the U.S. is required pursuant to this analysis, and noted that it had commenced coordination discussions with U.S. operators in 2002. *Id.*, Technical Appendix at 7-8.

In similarly granting Spectrum Five's request for market access and EchoStar's license application, the International Bureau determined that action in the proceedings was

appropriate even though neither party had commenced – much less completed – the process of coordinating its planned operations with networks deemed affected under ITU regulations.⁴ In the *Spectrum Five Order* the Bureau expressly “reject[ed] DIRECTV’s argument that we cannot grant market access prior to completion of coordination with U.S. operators.”⁵

Despite this clear precedent, most of DIRECTV’s contentions here boil down to a reiteration of its past claims that coordination with affected networks must be finalized before the Commission can grant applications for new U.S. DBS capacity. DIRECTV does not even attempt to distinguish the contrary holding in *Spectrum Five*, or the supporting decisions on which the Bureau relied there. DIRECTV’s repetitive arguments should therefore be summarily dismissed.

First, DIRECTV objects that the power levels proposed substantially exceed those in SES Americom’s April 2002 petition, and claims that AMC-20 cannot coexist with U.S. DBS systems without causing service disruptions. DIRECTV Opposition at 3. However, grant of the AMC-20 Petition subject to a coordination requirement poses no risk to DIRECTV. As DIRECTV recognizes (*id.* at 5), SES Americom has expressly acknowledged its obligation to coordinate with U.S. systems, and it has also made clear in the pending rulemaking proceeding its willingness to operate at a lower power than incumbent systems and take other steps to

⁴ See *Spectrum Five Order* at ¶ 18 (“we recognize that Spectrum Five will have to conduct coordination negotiations with the affected DBS operators”); ¶ 30 (“we are satisfied that granting the Spectrum Five Petitions on the condition that it coordinate with EchoStar and DIRECTV will protect those existing operations”) (footnote omitted); *EchoStar 86.5 Order* at ¶ 7 (granting application “subject to the condition that EchoStar not exceed certain interference limits until it has successfully coordinated its operations with operators of adjacent and affected DBS satellites”) (footnote omitted).

⁵ *Spectrum Five Order* at ¶ 31 (citing DIRECTV pleadings).

facilitate coordination.⁶ AMC-20 will be permitted to operate only at the power levels specified in the terms of coordination, not those proposed in the petition. Thus, DIRECTV's complaint about the proposed levels is irrelevant.⁷

The same is true for DIRECTV's recitations regarding the amount by which the AMC-20 network as proposed would exceed the OEPM threshold used to determine whether a network is affected under ITU procedures. DIRECTV Opposition at 5. Once again the premise for DIRECTV's argument is the claim that the Commission cannot grant authority for a system under circumstances where coordination is required and has not yet been completed.⁸ As discussed above, DIRECTV cites absolutely no authority for this assertion, which directly conflicts with the Bureau's explicit holding in the *Spectrum Five Order*.⁹ SES Americom recognizes that coordination is necessary here given the OEPM results¹⁰ and has committed to coordination. Under the *Spectrum Five* precedent, that disposes of the issue.

⁶ See Comments of SES Americom Inc. in IB Dkt No. 06-160 (filed Dec. 12, 2006) ("SES Americom 06-160 Comments") at 16-17; Reply Comments of SES Americom Inc. in IB Dkt No. 06-160 (filed Jan. 25, 2007) ("SES Americom 06-160 Reply Comments") at 9-11.

⁷ SES Americom will not address here the accuracy of DIRECTV's calculations of the impact of AMC-20 on adjacent DIRECTV operations. DIRECTV Opposition at 3 (data provided in table format). As discussed previously, these are matters for discussion in network-to-network coordination negotiations.

⁸ See *id.* (alleging that AMC-20 Petition "must be denied" because the proposed system would exceed the Annex 1 limits and has not yet been coordinated).

⁹ The Spectrum Five network exceeded the applicable OEPM triggers for certain pending U.S. modifications to the Region 2 Plan by more than 16 dB (*Spectrum Five Order* at ¶ 24), substantially in excess of the results for the AMC-20 network cited by DIRECTV.

¹⁰ The OEPM calculations serve to trigger the coordination requirement under the ITU rules, but as the Commission has recognized, they are not well-suited for use in actual coordination negotiations. *Reduced Spacing NPRM* at ¶ 45 (noting that OEPM calculations are "difficult and complex" and vary depending on the baseline interference environment). For this reason, SES Americom has argued in the rulemaking that the OEPM methodology should not be used in the coordination process. See SES Americom 06-160 Comments at 13-14; SES Americom 06-160 Reply Comments at 19-20.

DIRECTV's assertions that the AMC-20 Petition does not comply with Commission rules are simply thinly disguised variations on the same theme. For example, DIRECTV argues that the requirement in Section 25.114(b) that a satellite application must be "a concrete proposal" is violated if the parameters described in the application are subject to modification to accommodate coordination.¹¹ The suggestion that the AMC-20 Petition, supported by detailed technical specifications, contour maps, interference analyses and ITU documentation, does not represent a "concrete proposal" is entirely inconsistent with Commission rules, practice and precedent.

Furthermore, it could not be more clear that an applicant need not have completed coordination to satisfy Section 25.114(b). That rule applies to FSS as well as DBS applications, and in both services the Commission routinely issues licenses prior to completion of coordination.¹² For example, in its application last year for DIRECTV 13, DIRECTV acknowledged that coordination would be required with the administrations of the United Kingdom and the Netherlands because DIRECTV's operations as proposed would cause the Annex 1 limits to be exceeded in reference to the ITU filings for the AMC-20 and Spectrum Five networks.¹³ The Bureau granted the application pending coordination but expressly advised DIRECTV that its operations "may be subject to additional terms and conditions as required to

¹¹ See DIRECTV Opposition at 4. DIRECTV unsuccessfully made the same argument about the Spectrum Five petition. See Reply of DIRECTV Enterprises, LLC, File Nos. SAT-LOI-20050312-0062/63 at 3 (filed June 8, 2005).

¹² See AMC-20 Petition at 9 & nn. 17-18. The Commission "has held that it is not necessary to complete international coordination before a satellite system can be authorized to provide service in the United States." *Loral Spacecom Corp.*, Order, 18 FCC Rcd 16374, 16379-380 (Sat. Div. 2003).

¹³ File No. SAT-RPL-20060119-00005, Appendix D at D-1. To SES Americom's knowledge, DIRECTV has taken no action to initiate coordination discussions concerning this spacecraft with the United Kingdom or SES Gibraltar, and certainly no coordination agreement was in place at the time the Commission granted the application.

effect coordination or obtain the agreement of other Administrations.”¹⁴ Thus, the fact that technical parameters may need to be adjusted to satisfy coordination plainly does not render an applicant’s proposal insufficiently concrete.

DIRECTV’s argument regarding compliance of the AMC-20 Petition with Section 25.114(d)(13)(i) must fail for the same reason. *See* DIRECTV Opposition at 6. That provision requires a demonstration that “the proposed system could operate satisfactorily if all assignments” in the Region 2 Plans were implemented. 47 C.F.R. § 25.114(d)(13)(i).

DIRECTV claims that SES Americom “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.” *Id.* But this argument misstates the authority that SES Americom has requested and that Spectrum Five was granted, which includes the right to operate in a manner that exceeds the Annex 1 limits if coordination with affected U.S. networks has been achieved.¹⁵

The *Spectrum Five Order* makes clear that the Commission’s rules, including Section 25.114(d)(13)(i), are satisfied by an application that contains a full technical showing with respect to the proposed system but contemplates adjustments to the operations as necessary to comply with the terms of coordination.¹⁶ The Bureau considered and rejected DIRECTV’s arguments to the contrary in reaching its decision in *Spectrum Five*.¹⁷

¹⁴ File No. SAT-RPL-20060119-00005, Attachment to Grant Stamp at ¶ 4 (granted Nov. 16, 2006).

¹⁵ *See Spectrum Five Order* at ¶ 30, ¶ 43(d).

¹⁶ *See id.* at ¶ 6 (discussing FCC requirements, including those of Section 25.114(d)(13)(i), and determining that “if an applicant can coordinate its proposal . . . we believe our rules allow us to consider these applications”); ¶ 29 (“Spectrum Five has shown a willingness to modify the technical characteristics of its system to achieve a coordination agreement with the existing DBS operators.”).

¹⁷ *See id.* at ¶¶ 25 & 28.

Under these circumstances, consistent with applicable precedent, the Bureau must conclude that the AMC-20 Petition conforms to the requirements of the Commission's rules, and that grant of market access subject to necessary coordination with U.S. networks is warranted.

II. GRANT OF THE AMC-20 PETITION WILL SERVE THE PUBLIC INTEREST

Issuance of the declaratory ruling requested in the AMC-20 Petition is also consistent with the Commission's findings that provision of new DBS capacity at reduced orbital spacing will benefit U.S. consumers. In the *Reduced Spacing NPRM*, the Commission noted that the availability of DBS spectrum at additional orbital locations will "provide existing and potential DBS operators with [a] valuable option with which they can expand their service offerings." *Reduced Spacing NPRM* at ¶ 31. Similarly, in granting authority to Spectrum Five and EchoStar, the Bureau found that introduction of new DBS service will allow significant competitive gains by facilitating new entry, promoting the expansion of service options for consumers, and stimulating technological innovation.¹⁸

DIRECTV repeats here the objections it has previously made to introduction of additional U.S. DBS systems at reduced spacing,¹⁹ but they are unfounded. For example, DIRECTV claims again that operations at reduced spacing will not promote new entry. DIRECTV Opposition at 7. As noted above, however, the Commission has determined that additional DBS capacity will benefit consumers by giving them access to additional programming content, whether the spectrum is used by incumbent operators or new entrants.

¹⁸ See *Spectrum Five Order* at ¶ 1; *EchoStar 86.5 Order* at ¶ 1.

¹⁹ In support of its claims, DIRECTV incorporates by reference its pleadings in response to the *Reduced Spacing NPRM*. See DIRECTV Opposition at 4. SES Americom has responded to those DIRECTV pleadings in the rulemaking proceeding and refers the Commission to its comments and reply comments in that docket. See SES Americom 06-160 Comments and SES Americom 06-160 Reply Comments.

DIRECTV also alleges that operation of AMC-20 “as currently proposed by SES would have a significant adverse impact on current and future services” from orbital locations allocated to the U.S. under the Region 2 Plan. DIRECTV Opposition at 2. As SES Americom has previously observed, DIRECTV in its analysis of the potential effect of new DBS capacity at reduced spacing insists on relying solely on the as-filed characteristics of the systems and ignoring the applicants’ commitment to adjust their operations as needed pursuant to the coordination process.²⁰ In particular, SES Americom has expressed a willingness to operate at reduced power relative to incumbent systems and to employ larger dishes.²¹ Furthermore, as discussed above, grant of the authority SES Americom has requested subject to coordination poses no risk to DIRECTV; the Bureau has already determined that the coordination process is adequate to protect DIRECTV’s interests.²²

Finally, DIRECTV reiterates its assertion that DBS spectrum from satellites operating at reduced orbital spacing is not needed in light of the availability of other frequencies for video delivery to consumers. DIRECTV Opposition at 7. Again, however, DIRECTV ignores the fact that the Commission has already considered and rejected this claim. Specifically, the Commission found that making DBS capacity available at reduced orbital locations is justified because it will “provide existing and potential DBS operators with another valuable option with which they can expand their service offerings.” *Reduced Spacing NPRM* at ¶ 31.

²⁰ SES Americom 06-160 Reply Comments at 9-11.

²¹ *Id.* at 10-11; SES Americom 06-160 Comments at 16-17.

²² *Spectrum Five Order* at ¶ 30.


CONCLUSION

For the reasons discussed herein and in the AMC-20 Petition, expedited grant of the AMC-20 Petition is consistent with Commission rules and policies and will benefit U.S. consumers. DIRECTV's arguments to the contrary have already been rejected in other proceedings and should be promptly dismissed here as well.

Respectfully submitted,

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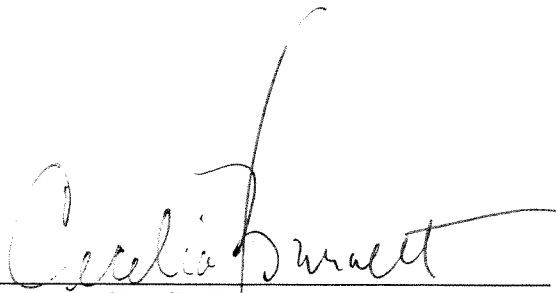
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April 5, 2007

CERTIFICATE OF SERVICE

I, Cecelia Burnett, hereby certify that on this 5th day of April, 2007, copies of the foregoing "Response of SES Americom, Inc." were served by first class mail, unless otherwise indicated, to the following:

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