

June 4, 2010

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Ms. Mindel De La Torre
Chief, International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: 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, Call Sign S2731

Dear Ms. De La Torre:

SES Americom, Inc., (“SES Americom,” doing business as “SES WORLD SKIES”),¹ respectfully requests immediate grant of its above-referenced petition for a declaratory ruling authorizing U.S. service using a new Direct Broadcast Satellite (“DBS”) spacecraft to be positioned at 105.5° W.L. (the “AMC-20 Petition”). Grant of the AMC-20 Petition is required under controlling Commission precedent, and there is no basis for any further delay.

BACKGROUND

SES WORLD SKIES was the first operator to propose introduction of new capacity for DBS service through the deployment of satellites at reduced orbital spacing. SES WORLD SKIES initially sought to serve the U.S. using a DBS satellite to be located at 105.5° W.L. more than eight years ago, in April 2002.² Other applicants followed suit: EchoStar requested a U.S. license for a DBS satellite at

¹ On September 7, 2009, SES S.A. announced that the newly integrated operations of its two indirect subsidiaries, New Skies Satellites B.V. and SES Americom would be conducted under a single brand name, SES WORLD SKIES. The new brand name does not affect the underlying legal entities that hold Commission authorizations or U.S. market access rights.

² SES Americom, Inc., Petition for Declaratory Ruling to Serve the U.S. Market Using BSS Spectrum from the 105.5° W.L. Orbital Location, FCC File Nos. SAT-PDR-20020425-00071, SAT-AMD-20051116-00219, and SAT-AMD-20060120-00006 (“AMC-14 Petition”). Because of a technical defect, the AMC-14 Petition was dismissed without prejudice to refiling. See Letter of Robert G. Nelson to Nancy J. Eskenazi, DA 06-2438, dated Nov. 29, 2006 (“AMC-14 Letter”). The Commission waived the freeze on DBS filings to permit resubmission of the request for U.S. market access from 105.5° W.L., AMC-14 Letter at 3, and SES WORLD SKIES filed the AMC-20 Petition in accordance with that waiver.

86.5° W.L. in 2003,³ and in 2005 Spectrum Five sought U.S. market access for two Netherlands-licensed DBS satellites to be positioned at 114.5° W.L.⁴

In 2006, the Commission initiated a rulemaking proceeding on DBS licensing, including consideration of issues relating to DBS operations at reduced orbital spacing.⁵ The Commission made clear, however, that resolution of the rulemaking was not a prerequisite to action on applications for DBS satellites to operate with reduced spacing: “[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.”⁶

Pursuant to that explicit direction, the International Bureau in late 2006 granted both the EchoStar 86.5 Application and the Spectrum Five 114.5 Petition.⁷ In each case, the Bureau determined that grant was in the public interest because consumers would benefit from “more satellite programming choices, more alternatives in subscription video providers and services at reduced prices.”⁸ The decisions expressly held that action on the applications prior to resolution of the issues raised in the *DBS Notice* was appropriate and within the Bureau’s delegated authority.⁹ The Bureau rejected arguments that the applications did not comply with Commission rules and that action was premature while the rulemaking was pending and prior to completion of coordination with adjacent DBS operations.¹⁰ The full Commission later affirmed both the *EchoStar 86.5 Order* and the *Spectrum Five Order*.¹¹

³ EchoStar Satellite L.L.C., Application to Construct, Launch, and Operate a Direct Broadcast Satellite at the 86.5° W.L. Orbital Location, File No. SAT-LOA-20030609-00113, Call Sign S2454 (the “EchoStar 86.5 Application”).

⁴ 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, File Nos. SAT-LOI-20050312-00062/0063, Call Signs S2667 & S2668 (the “Spectrum Five 114.5 Petition”).

⁵ 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, FCC 06-120, Report No. SPB-196, rel. Aug. 18, 2006 (“*DBS Notice*”).

⁶ *Id.* at ¶ 21 (footnote omitted).

⁷ See *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*”); *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*”).

⁸ *EchoStar 86.5 Order* at ¶ 1; see also *Spectrum Five Order* at ¶ 1.

⁹ *EchoStar 86.5 Order* at ¶¶ 8-10; *Spectrum Five Order* at ¶¶ 5-8.

¹⁰ *EchoStar 86.5 Order* at ¶¶ 8-18; *Spectrum Five Order* at ¶¶ 5-41.

¹¹ See *EchoStar Satellite Operating Corp. and Spectrum Five, LLC*, Memorandum Opinion and Order, FCC 08-64, 23 FCC Rcd 3252 (2008) (“*EchoStar/Spectrum Five Affirmation Order*”).

But for a discrete technical flaw, SES WORLD SKIES' AMC-14 Petition would have been eligible for grant in November 2006, at the same time as the EchoStar 86.5 Application and the Spectrum Five 114.5 Petition. The Satellite Division dismissed the AMC-14 Petition due to the flaw but authorized resubmission of the underlying request and waived the DBS application freeze that had been imposed in 2005¹² to permit refiling.¹³ Pursuant to that waiver, SES WORLD SKIES promptly submitted the AMC-20 Petition in January 2007. DIRECTV Enterprises, LLC ("DIRECTV") was the only party to object to the AMC-20 Petition,¹⁴ and the pleading cycle in the proceeding was completed over three years ago, in April 2007.

THE BUREAU SHOULD IMMEDIATELY GRANT THE AMC-20 PETITION

There is no legitimate obstacle to immediate grant of the AMC-20 Petition. To the contrary, each of the arguments that DIRECTV raised in its pleadings concerning AMC-20 has been rejected by the Bureau in the *EchoStar 86.5 Order* and *Spectrum Five Order*, and those decisions have been affirmed by the full Commission. In light of this controlling precedent, the Bureau should authorize U.S. market access for AMC-20 pursuant to the same terms and conditions imposed in the Spectrum Five market access proceeding.

The Bureau has authority to act pending resolution of the *DBS Notice*. As a threshold matter, it is clear that the Bureau need not await completion of the pending rulemaking proceeding before granting the AMC-20 Petition, as DIRECTV has claimed.¹⁵ This argument was the cornerstone of DIRECTV's challenge to the *Spectrum Five Order*, and was conclusively rejected by the full Commission.

Specifically, in its application for review of the *Spectrum Five Order*, DIRECTV asserted that the Bureau had acted "in a manner specifically foreclosed by the full Commission's construction of the applicable processing rules" and had "addressed novel questions of law and policy that should have been left to the full Commission."¹⁶ DIRECTV alleged that under the policies set forth in the *DBS Notice*, Spectrum Five's request for market access could not be granted because the proposed Spectrum Five satellites would affect DIRECTV's operations under International Telecommunication Union ("ITU") rules, and Spectrum Five had not yet coordinated with DIRECTV.¹⁷

¹² See *Direct Broadcast Satellite (DBS) Service Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications*, Public Notice, FCC 05-213 (rel. Dec. 21, 2005).

¹³ AMC-14 Letter at 3.

¹⁴ See Opposition of DIRECTV Enterprises, LLC, File No. SAT-PDR-20070129-00024, filed Mar. 26, 2007 ("DIRECTV Opposition"); Reply of DIRECTV Enterprises, LLC, File No. SAT-PDR-20070129-00024, filed Apr. 12, 2007 ("DIRECTV Reply").

¹⁵ DIRECTV Opposition at 4-5.

¹⁶ Application for Review of DIRECTV Enterprises, LLC, File Nos. SAT-LOI-20050312-00062/0063, Call Signs S2667 & S2668, filed Dec. 29, 2006 ("DIRECTV Application for Review") at 1.

¹⁷ *Id.* at 2-3.

The Commission disagreed with DIRECTV and ruled that the Bureau “properly acted within the scope of its delegated authority when it granted Spectrum Five’s petitions and EchoStar’s application.”¹⁸ The Commission explained that:

The Bureau conditioned the grants so that Spectrum Five and EchoStar may not operate in a manner that affects other DBS operators unless they first coordinate with affected operators. This condition is fully consistent with our obligations under ITU regulations, and is sufficient to provide all due interference protection to other DBS operations.¹⁹

This precedent clearly establishes that grant of the AMC-20 Petition is consistent with the terms of the *DBS Notice* and within the Bureau’s authority.

Grant of the AMC-20 Petition with a coordination condition is in the public interest. Prior Commission decisions also dispose of DIRECTV’s claim that authorization of DBS satellites at reduced spacing is inconsistent with the interests of U.S. consumers.

As noted above, both the *EchoStar 86.5 Order* and the *Spectrum Five Order* expressly determined that authorizing new DBS networks at reduced orbital spacing could enhance consumer welfare by leading to additional service options and lower prices.²⁰ In its pleadings concerning AMC-20, DIRECTV nevertheless alleged that U.S. consumers could be harmed by introduction of new DBS capacity at reduced spacing because of interference with the offerings of DBS incumbents.²¹

The *EchoStar/Spectrum Five Affirmation Order* rejected assertions that the potential for interference from new DBS entrants warranted delaying or denying requests for authorization. Specifically, the Commission determined that the Bureau’s grants of the Spectrum Five 114.5 Petition and EchoStar 86.5 Application were consistent with “its normal practice of imposing conditions, as appropriate, in order to address interference concerns.”²² The coordination condition imposed by the Bureau, the Commission found, was sufficient to ensure that “operations will not affect other systems except upon an agreed basis.”²³

Grant of the AMC-20 Petition with a similar condition, requiring that SES WORLD SKIES coordinate any operations that would affect an incumbent system under the ITU rules, is therefore consistent with Commission policies and the public interest.

The AMC-20 Petition conforms to Commission rules. The Commission has likewise rejected arguments raised by DIRECTV regarding new entrants’ compliance with the Commission’s Part 25 rules for DBS systems.

¹⁸ *EchoStar/Spectrum Five Affirmation Order*, 23 FCC Rcd at 3255 (¶ 8).

¹⁹ *Id.*

²⁰ *EchoStar 86.5 Order* at ¶ 1; *Spectrum Five Order* at ¶ 1.

²¹ DIRECTV Opposition at 2-3; DIRECTV Reply at 1.

²² *EchoStar/Spectrum Five Affirmation Order*, 23 FCC Rcd at 3255 (¶ 10).

²³ *Id.*

In its pleadings with respect to the AMC-20 Petition, DIRECTV claimed that the proposal failed to comply with two Commission rules: Section 25.114(b), which requires that each satellite application be a “concrete proposal,”²⁴ and Section 25.114(d)(13)(i), which requires submission of information regarding a DBS network’s ability to operate if other systems filed with the ITU were implemented.²⁵ In each case, DIRECTV pointed to the same underlying issue, suggesting that because AMC-20 had not yet been coordinated with DIRECTV, the technical information provided was not sufficiently detailed to meet the terms of the rules.²⁶

DIRECTV made identical arguments regarding the Spectrum Five 114.5 Petition,²⁷ and the Bureau considered and rejected them. In particular, the Bureau emphasized that completion of coordination with U.S. DBS systems is not a prerequisite for grant of market access to a new DBS entrant.²⁸ The Commission later affirmed this finding, observing that it “routinely grants applications subject to conditions concerning the subsequent completion of coordination, including applications involving access to the U.S. market by foreign-licensed satellites.”²⁹ The Commission has never held that coordination must be completed prior to action on a DBS application in order to make the application sufficiently specific to comply with the terms of Section 25.114.

The Bureau is required to accord the same treatment to similarly situated applicants. Under long-standing principles of administrative law, the Commission is required to treat similarly situated applicants similarly.³⁰ Having corrected the technical defect in the original AMC-14 Petition, SES WORLD SKIES is entitled to have its AMC-20 Petition processed promptly and granted under the same terms and conditions that were imposed in the *Spectrum Five Order*.

²⁴ 47 C.F.R. § 25.114(b).

²⁵ 47 C.F.R. § 25.114(d)(13)(i).

²⁶ See DIRECTV Opposition at 4 & 6-7.

²⁷ See Reply of DIRECTV Enterprises, LLC, File Nos. SAT-LOI-20050312-00062/0063 (filed June 8, 2005) at 3 (discussing Sections 25.114(b) and 25.114(d)(13)(i) and alleging that “Spectrum Five has the burden to demonstrate that its system *as proposed* – not as it might be revised in the future as a result of coordination – could operate harmoniously with DBS systems already in the Region 2 Plan.”) (emphasis in original).

²⁸ *Spectrum Five Order* at ¶ 31 (“We reject DIRECTV’s argument that we cannot grant market access prior to completion of coordination with U.S. operators.”) (footnote omitted).

²⁹ *EchoStar/Spectrum Five Affirmation Order*, 23 FCC Rcd at 3255-56 (¶ 11) (footnotes omitted).

³⁰ See, e.g., *Adams Telcom, Inc. v. FCC*, 38 F3d 576, 581 (DC Cir 1994) (The court has reminded the FCC “of the importance of treating similarly situated parties alike or providing an adequate justification for disparate treatment.”) (citations omitted).

CONCLUSION

The AMC-20 Petition poses no novel questions of fact or law. To the contrary, the Bureau has considered and rejected all the arguments that have been raised in opposition to the petition, and the Bureau's holdings have been affirmed by the Commission. Under these circumstances, the Bureau should grant the AMC-20 Petition without further delay.

Respectfully submitted,

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cc: William M. Wiltshire, Counsel to DIRECTV