

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

FILED/ACCEPTED  
APR 12 2007  
Federal Communications Commission  
Office of the Secretary

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*In the Matter of* ) )  
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**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

**REPLY OF DIRECTV ENTERPRISES, LLC**

In its Opposition, DIRECTV Enterprises, LLC (“DIRECTV”) demonstrated that that the “tweener” petition re-submitted by SES Americom, Inc. (“SES”) was both substantively flawed and procedurally defective, and should therefore be denied.<sup>1</sup> In response,<sup>2</sup> SES attempts to bring its petition within the ambit of a recent tweener precedent – itself flawed and subject to reconsideration – that failed to address the main issue DIRECTV has raised in this proceeding. SES also attempts to buttress the purported public interest benefits of its proposed tweener operations, but in the process highlights the fact that a grant in this proceeding would establish a tweener system and its foreign licensing administration as gatekeepers to future development of the U.S. DBS service. In light of all of these deficiencies, the Commission should deny SES’s petition.

<sup>1</sup> Opposition of DIRECTV Enterprises, LLC (dated Mar. 26, 2007).

<sup>2</sup> Response of SES Americom, Inc. (dated Apr. 5, 2007) (“SES Response”).

## I. SES's Petition Fails to Satisfy The Commission's Rules

Not surprisingly, SES claims that the Bureau's grant of a tweener authorization to Spectrum Five answers all of the issues DIRECTV has raised in this proceeding and leads inexorably to the conclusion that the SES petition must be granted as well.<sup>3</sup> However, even putting aside the infirmities with the Bureau's handling of issues it *did* address in the *Spectrum Five* order that DIRECTV identified in its application for review,<sup>4</sup> there remains a procedural challenge that the Bureau ignored. 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 recognized in *Spectrum Five*, "[t]his showing is intended to demonstrate that the proposed system will meet its performance objectives given the Region 2 Plan assignments."<sup>5</sup> Nonetheless, the Bureau never made this evaluation – because Spectrum Five never provided the necessary data. Instead, as confirmed by the portions of the order cited by SES,<sup>6</sup> the Bureau considered whether Spectrum Five could operate *without causing harmful interference* to U.S. DBS operations – which is a separate requirement under Section 25.114(d)(13)(ii).<sup>7</sup> Thus, the

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<sup>3</sup> See, e.g., SES Response at 3-8 (citing *Spectrum Five, LLC*, 21 FCC Rcd. 14023 (Int'l Bur. 2006) ("*Spectrum Five*").

<sup>4</sup> Application for Review, File Nos. SAT-LOI-20050312-00062 and -00063 (filed Dec. 29, 2006).

<sup>5</sup> *Spectrum Five*, ¶ 6.

<sup>6</sup> See SES Response at 7 nn. 16-17 (citing paragraphs 6, 25, 28, and 29 of *Spectrum Five*, which discuss the tweener applicant's willingness to coordinate in order to avoid causing interference to operating U.S. DBS systems).

<sup>7</sup> 47 C.F.R. § 25.114(d)(13)(ii) (requiring submission of an analysis using the coordination triggers in Annex 1 to Appendices 30 and 30A of the ITU's Radio Regulations).

Bureau has not addressed this question – a failure of the *Spectrum Five* order that should not be replicated here.

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 SES’s application 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. Indeed, because SES has not provided information on an Annex 1-compliant system and recognizes that it will be required to alter its proposed operations significantly in order to achieve coordination with U.S. DBS systems,<sup>8</sup> the only technical information it has supplied to date *relates to the one system we know it will not build*. That cannot satisfy the requirements for DBS applications of Section 25.224(d)(13)(i).

## **II. SES Confirms That Grant of its Petition Would Create Gatekeepers With the Power to Dictate Development of the U.S. DBS Service**

In defense of its petition, SES cites the Bureau’s grant of a license for DIRECTV 13 as evidence of the Commission’s alleged practice of “routinely issu[ing] licenses prior to completion of coordination.”<sup>9</sup> The DIRECTV 13 satellite has been specifically designed to provide DBS service to small (8”-12”) receive antennas on mobile platforms, especially automobiles.<sup>10</sup> As the technical submission in that application demonstrates,

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<sup>8</sup> SES Response at 4-5, 9.

<sup>9</sup> *Id* at 6.

<sup>10</sup> See FCC File No. SAT-RPL-20060119-00005.

DIRECTV's proposed operations at the 110° W.L. location would not exceed the Annex 1 coordination triggers for any system (other than DIRECTV's own satellites) in the Region 2 Plan.<sup>11</sup> Thus, unlike SES's tweener proposal, DIRECTV 13 is fully coordinated with all systems authorized to serve the United States, as well as all other systems currently in operation and all those that have completed international coordination.<sup>12</sup>

However, DIRECTV 13 would affect the tweener systems proposed by both SES and Spectrum Five under the Annex 1 standard. As SES's Response confirms, DIRECTV will therefore have to coordinate with the United Kingdom and the Netherlands.<sup>13</sup> Accordingly, if the Bureau acquiesces to the current proposals for entry of SES's tweener system in the Region 2 Plan, SES and the United Kingdom would be in a position to dictate whether DIRECTV will be able to offer this exciting new service innovation to U.S. consumers, and if so, under what conditions. Creating such "gatekeepers" could compromise the ability of the U.S. DBS industry – and the Commission – to introduce cutting-edge technologies and services. Thus, in determining the public interest balance in this proceeding, the Commission must recognize that authorizing entry for SES's tweener system today has serious consequences for the Commission's ability to authorize improvements in U.S. DBS operations in the future.

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<sup>11</sup> See *id.*, Narrative at Appendix D.

<sup>12</sup> SES asserts that the Commission routinely licenses both DBS and FSS satellites prior to completion of coordination. SES Response at 6. While that may be true with respect to incomplete international coordination, it is patently not true with respect to compliance with the Commission's presumptive domestic coordination requirements for FSS systems – *i.e.*, the two-degree spacing rules. See, e.g., *EchoStar Satellite, LLC*, 20 FCC Rcd. 12027 (Int'l Bur. 2005) (denying application for FSS satellite that conflicted with prior application and declining to keep it on file "based upon the assertion that sharing may be possible and an agreement to that effect will be reached in the future").


<sup>13</sup> SES Response at 6.

\* \* \*

In these circumstances – where the application is defective and there is little for the public to gain and much to lose – the Commission should deny the petition.

Respectfully submitted,

DIRECTV ENTERPRISES, LLC

By:   
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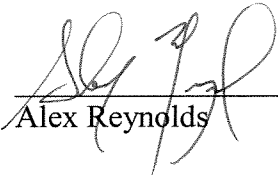
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Dated: April 12, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 12<sup>th</sup> day of April, 2007, a copy of the foregoing Reply of DIRECTV Enterprises, LLC was served by hand delivery upon:

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