

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
SES Americom, Inc.)	IBFS File No. SAT-PDR-20070129-00024
)	Call Sign S2731
Petition for Declaratory Ruling Regarding Direct)	
Broadcast Satellite Service to the U.S. Market)	
from the 105.5° W.L. Orbital Location)	

ORDER

Adopted: January 16, 2013

Released: January 16, 2013

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. With this Order, we grant the request of SES Americom, Inc. (SES Americom) for a declaratory ruling regarding access to the U.S. market using a planned geostationary satellite orbit (GSO) space station in the Direct Broadcast Satellite (DBS) service. The proposed satellite will operate under the supervision of the United Kingdom (Gibraltar) at the 105.5° W.L. orbital location.¹ We conclude that SES Americom's provision of service to U.S. customers, using the 12.2-12.7 GHz (space-to-Earth) frequency band for downlink service transmissions, and the 17.3-17.8 GHz (Earth-to-space) frequency band for uplink feeder links, as specified in this Order, would serve the public interest. Grant of this request will promote competition in the United States by providing consumers with an additional choice in DBS service offerings.

II. DISCUSSION

A. Application Processing Overview

2. SES Americom's proposed operations at the 105.5° W.L. orbital location are so-called "tweener" operations, since they would occur in between two other orbital locations currently used for service to the United States.² The SES Americom Petition was placed on Public Notice on February 23,

¹ SES Americom, Inc. Petition for Declaratory Ruling, IBFS File No. SAT-PDR-20070129-00024 (filed Jan. 29, 2007) (SES Americom PDR).

² DIRECTV Enterprises, LLC (DIRECTV) operates DBS satellites with CONUS coverage at the 101° W.L. orbital location and the 110° W.L. orbital location. DISH Operating L.L.C. (DISH) operates DBS satellites with CONUS coverage at the 110° W.L. orbital location. For a more detailed discussion of DBS orbital locations, see 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*, 21 FCC Rcd 14023, 14024, ¶ 2 (Int'l Bur. 2006) (*Spectrum Five Order*). The ITU Region 2 BSS Plan is comprised of the Plan for BSS in the band 12.2-12.7 GHz in ITU Region 2, as contained in Appendix 30 of the ITU Radio Regulations, and the associated Plan for the feeder-links in the frequency band 17.3-17.8 GHz for the BSS in Region 2, as contained in Appendix 30A of the ITU Radio Regulations.

2007.³ DIRECTV filed an opposition alleging that SES Americom's request is procedurally and substantively defective.⁴ DIRECTV also argued that, unless and until the Commission adopts new rules for DBS, the International Bureau lacks authority to grant twener applications unless the proposed system would not exceed the interference limits in the applicable ITU Radio Regulations or unless the applicant has completed coordination with affected U.S. systems.⁵ SES Americom responded to DIRECTV's opposition,⁶ and DIRECTV replied.⁷

3. In November 2006, the International Bureau granted two other twener applications, conditioning the grants so that the two grantees, Spectrum Five and EchoStar, could not operate in a manner that affects other DBS operators unless they first coordinated with affected operators.⁸ DIRECTV, EchoStar, and Telesat Canada appealed the decision. On review, the Commission concluded that the Bureau followed established procedures, in actions consistent with Commission guidance and within the scope of its delegated authority, when the Bureau granted the Spectrum Five and EchoStar twener applications.⁹ On that basis, we reject DIRECTV's argument that grant of twener applications must await action on new DBS rules.

B. Market Entry Analysis

1. General Framework

4. The Commission's *DISCO II Order* established a framework for analyzing requests for non-U.S.-licensed space stations to serve the U.S. market.¹⁰ This analysis considers the effect on competition in the United States,¹¹ eligibility and operating requirements,¹² spectrum availability,¹³ and

³ See Satellite Policy Branch Information: Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00422 (rel. Feb. 23, 2007). SES Americom initially filed its petition for declaratory ruling on April 25, 2002, proposing to provide direct-to-home services to consumers in the United States from its AMC-14 space station at the 105.5° W.L. orbital location. The Satellite Division found the Petition defective and dismissed it without prejudice to re-filing. Letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, to Nancy J. Eskenazi, SES Americom, Inc., dated Nov. 29, 2006, 21 FCC Rcd 14020. As part of that action, the Satellite Division waived the freeze on filing of new DBS applications to the extent necessary to allow SES Americom to re-file its petition within 30 days. See, also Direct Broadcast Satellite 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*, 20 FCC Rcd 20618, 20619 (2005).

⁴ Opposition of DIRECTV Enterprises, LLC (filed March 26, 2007) (DIRECTV Opposition).

⁵ DIRECTV Opposition at 4-5. See also Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, *Notice of Proposed Rulemaking*, 21 FCC Rcd 9443 (2006).

⁶ Response of SES Americom, Inc. (filed April 5, 2007).

⁷ Reply of DIRECTV Enterprises, LLC (filed April 12, 2007).

⁸ *Spectrum Five Order*, 21 FCC Rcd 14023; 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*, 21 FCC Rcd 14045 (Int'l Bur. 2006) (*EchoStar-86.5W Order*).

⁹ EchoStar Satellite Operating Corporation and Spectrum Five, LLC, *Memorandum Opinion and Order*, 23 FCC Rcd 3252 (2008) (*EchoStar/Spectrum Five MO&O*).

¹⁰ Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, *Report and Order*, 12 FCC Rcd 24094 (1997) (*DISCO II Order*), on reconsideration, *First Order on Reconsideration*, 15 FCC Rcd 7207 (1999).

¹¹ *DISCO II Order*, 12 FCC Rcd 24094, at 24107-56, ¶¶ 30-145 (discussed in section II.B.2 *infra*).

¹² *Id.* at 24159-69, ¶¶ 151-74 (To the extent relevant, these matters are discussed in sections II.B.3-4 *infra*).

¹³ *Id.* at 24157-59, ¶¶ 146-50 (discussed in section II.B.3 *infra*).

national security, law enforcement, foreign policy, and trade concerns.¹⁴ Thus we evaluate the SES Americom PDR under the established framework.¹⁵

2. Competition Considerations

5. In the *DISCO II Order*, the Commission adopted two different variations of the framework under which it evaluates a foreign entrant's effect on competition in the U.S. satellite market. First, in cases where the non-U.S. satellite is licensed by a country that is a member of the WTO and will provide services covered by the U.S. commitments under the WTO Basic Telecom Agreement, the Commission established a presumption that entry will further competition in the United States. The U.S. commitments specifically exclude, however, direct-to-home (DTH) services, DBS, and Digital Audio Radio Service.¹⁶ For such non-covered services, and for countries not members of the WTO, the Commission conducts an Effective Competitive Opportunities (ECO-Sat) analysis for non-U.S.-licensed space stations. Under this second variation, applicants seeking to access the U.S. market via a foreign satellite must demonstrate that U.S.-licensed space stations have effective competitive opportunities to provide analogous services in the country in which the satellite is licensed and in all "route market" countries.¹⁷ We examine in particular *de jure* and *de facto* barriers to entry, and whether any such barriers would cause competitive distortions in the United States.¹⁸

6. In this case, SES Americom is seeking authority to provide DBS in the United States from AMC-20, a satellite under the supervision of the United Kingdom (Gibraltar), and on various route markets, including the United Kingdom, Gibraltar, and various British Overseas Territories in the Atlantic Ocean and Caribbean Basin.¹⁹ Since the SES Americom PDR was filed, the Satellite Division has found the ECO-Sat test is satisfied for the United Kingdom and Gibraltar, Bermuda, the British Virgin Islands, and the Cayman Islands.²⁰ Thus, we need only examine the route markets to Anguilla, Turks & Caicos, and Montserrat. SES Americom states that none of these island jurisdictions has relevant written regulations, but SES Americom states that there are no barriers to entry by BSS services based on communications with regulatory officials in each territory.²¹ SES Americom thus asserts that the ECO-Sat test is satisfied for these route markets. No party commented on SES Americom's ECO-Sat submission, and there is nothing in the record that contradicts SES Americom. We therefore have no evidence in the record that suggests the existence of market entry barriers to Anguilla, Turks & Caicos, and Montserrat. Accordingly, we find that the AMC-20 satellite's entry into the U.S. market for the

¹⁴ *Id.* at 24169-72, ¶¶ 175-82 (discussed in section II.B.4 *infra*).

¹⁵ Foreign-licensed operators seeking U.S. market access must file the same information requested under Section 25.114 of the Commission's rules, 47 C.F.R. § 25.114, that applicants for a U.S. license in the same service must file. See *DISCO II Order*, 12 FCC Rcd at 24175, ¶ 190. The *DISCO II Order* decided that foreign DBS operators seeking access to the United States must file the same information as U.S. applicants under Section 100.13 of the Commission's rules. Section 100.13 has since been eliminated, as DBS applications are now filed in accordance with the general Part 25 satellite rules. See *Policies and Rules for the Direct Broadcast Satellite Service, Report and Order*, 17 FCC Rcd 11331 (2002).

¹⁶ *DISCO II Order*, 12 FCC Rcd at 24104, ¶ 25.

¹⁷ 47 C.F.R. § 25.137(a). A route market is a market in which a satellite transmission originates or terminates. See *DISCO II Order*, 12 FCC Rcd at 24130, ¶ 78.

¹⁸ *DISCO II Order*, 12 FCC Rcd at 24137, ¶ 99.

¹⁹ SES Americom PDR at 12.

²⁰ IBFS File No. SAT-ASG-20080609-00120 (adding the AMC-21 space station to the Commission's Permitted Space Station List, based on a finding that the ECO-Sat Test is satisfied for these and other route markets).

²¹ SES Americom PDR at 14.

purpose of offering DBS services in the 12.2-12.7 GHz band will not negatively effect competition for these services in the U.S. market, including Alaska and Hawaii.

3. Technical Qualifications and Spectrum Availability

7. In the *DISCO II Order*, the Commission determined that, given the scarcity of geostationary-satellite orbital locations and spectrum resources, it would consider spectrum availability as a factor in determining whether to allow a non-U.S.-licensed space station to serve the market in the United States.²² This is consistent with the Chairman's Note to the Basic Telecom Agreement, which states that WTO Members may exercise their domestic spectrum/frequency management policies when considering foreign entry.²³ Thus, in the *DISCO II Order*, the Commission stated that when grant of access would create interference with U.S.-licensed systems, it might impose technical constraints on the non-U.S.-licensed system's operations in the United States or, when conditions cannot remedy the interference, deny access.

8. DIRECTV contends that SES Americom has failed to meet the requirements of the Commission's rules²⁴ to demonstrate that its DBS satellite network could operate satisfactorily with assignments in the BSS and feeder link Plans.²⁵ The Commission addressed similar objections in the *EchoStar/Spectrum Five MO&O* and concluded that those concerns could be appropriately addressed by imposing conditions regarding potential interference to U.S. DBS operations.²⁶ We see no reason to take a different approach in this case.²⁷ There are no factual differences between this case and those addressed in the *EchoStar/Spectrum Five MO&O* that would warrant a different outcome. The conditions imposed here are identical in all material respects to conditions the Commission described and affirmed in the *EchoStar/Spectrum Five MO&O*.²⁸

4. Legal Qualifications and Other Considerations

9. SES Americom holds a number of FCC licenses, and nothing in the record calls into question its legal qualifications. In accordance with the *DISCO II Order*, national security, law enforcement, foreign policy, and trade concerns are included in the public interest analysis.²⁹ The record does not include any information that would give rise to such concerns.

²² *DISCO II Order*, 12 FCC Rcd at 24159, ¶ 150.

²³ Chairman of the World Trade Organization Group on Basic Telecommunications, Chairman's Note, Market Access Limitations on Spectrum Availability, 36 I.L.M. at 372.

²⁴ 47 C.F.R. § 25.114(d)(13)(i).

²⁵ DIRECTV Opposition at 6.

²⁶ *EchoStar/Spectrum Five MO&O*, 23 FCC Rcd at 3259, ¶ 19.

²⁷ SES Americom indicates that it will seek to achieve coordination with U.S. DBS operators, and "contemplates adjustments to the operations as necessary to comply with the terms of coordination." SES Americom Response at 7. SES Americom indicates that it is willing "to operate at a lower power than the incumbents and take other steps in order to facilitate coordination." SES Americom Response at 4.

²⁸ *Spectrum Five Order*, 21 FCC Rcd at 14042-4, ¶ 43; *EchoStar-86.5W Order*, 21 FCC Rcd at 14059-60, ¶ 28; *affirmed by EchoStar/Spectrum Five MO&O*, 23 FCC Rcd at 3255, ¶ 8 (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").

²⁹ *DISCO II Order*, 12 FCC Rcd at 24170-72, ¶¶ 178-82.

5. Due Diligence

10. The Commission's rules establish a milestone schedule for DBS authorization holders in order to ensure that entities exercise due diligence in constructing their systems, under which authorization holders must complete contracting for all system satellites within one year of grant; complete construction of the first satellite in the system within four years of grant; and all satellites in the system must be in operation within six years of grant.³⁰ In addition to this schedule of milestones, the *Spectrum Five Order* and the *EchoStar-86.5W Order* included a requirement for completion of critical design review (CDR) within two years after grant, and filing of annual progress reports that illustrate the steps taken toward meeting milestones.³¹ In those orders, the Bureau explained that the annual reports were needed to ensure that the satellite operators were taking all necessary action to meet their milestones.³² Nothing in the record of this proceeding suggests that different treatment is warranted with respect to SES. Accordingly, we adopt the same conditions for this grant.

III. CONCLUSION

11. Based on the foregoing, we conclude that SES Americom's request for access to the United States market via the AMC-20 satellite is consistent with the Commission's rules and policies regarding access to the United States by non-U.S.-licensed satellites. We therefore grant SES Americom's PDR, subject to the conditions set forth in this Order, finding such grant to be in the public interest.

IV. ORDERING CLAUSES

12. Accordingly, pursuant to Section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 303(r), and Section 25.137 of the Commission's rules, 47 C.F.R. § 25.137, the petition for declaratory ruling filed by SES Americom, Inc., IBFS File No. SAT-PDR-20070129-00024, regarding access to the United States market in the Direct Broadcast Satellite service, using a proposed space station, AMC-20 (Call Sign 2731), which will operate under the supervision of the United Kingdom (Gibraltar) at the 105.5° W.L. orbital location IS GRANTED.

13. Accordingly, IT IS ORDERED that SES Americom, Inc. IS GRANTED access to the United States to provide Direct Broadcast Satellite service from the AMC-20 space station to be located at the 105.5° W.L. orbital location, and using the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands, in accordance with the terms, conditions, and technical specifications set forth in SES Americom, Inc.'s petition for declaratory ruling and the Federal Communications Commission's rules not waived herein, and subject to the following conditions:

- a. Communication services originating in the United States will be provided via the AMC-20 satellite only to points in Bermuda, the British Virgin Islands, Anguilla, Turks & Caicos, Montserrat, the Cayman Islands, and the United States.

³⁰ 47 C.F.R. § 25.148(b).

³¹ *Spectrum Five Order*, 21 FCC Rcd at 14041-2, ¶ 40-41; *EchoStar-86.5W Order*, 21 FCC Rcd at 14058-59, ¶ 25-26. Requiring the CDR milestone and submission of annual reports is consistent with the requirements for other geostationary orbit satellite systems. See 47 C.F.R. §§ 25.164, 25.210(l). We note that in the *DBS Notice*, the Commission sought comment on whether to apply these requirements to DBS operators. See *DBS Notice*, 21 FCC Rcd at 9456-57, ¶¶ 26-27.

³² *Spectrum Five Order*, 21 FCC Rcd at 14042, ¶ 41; *EchoStar-86.5W Order*, 21 FCC Rcd at 14059, ¶ 26.

- b. If SES Americom, Inc. makes any changes to the frequencies, antenna beam patterns, or power levels of the AMC-20 space station to comply with coordination obligations or to adjust its operations in order to not affect the operations of other DBS operators, SES Americom, Inc. must file an application for modification of its market access grant to reflect these changes, no more than 30 days after completing the critical design review for AMC-20.
- c. SES Americom, Inc. may operate feeder links and service links originating or terminating in the United States on its AMC-20 space station in a manner that does not exceed the interference limits in Annex 1 to Appendices 30 and 30A of the ITU Radio Regulations³³ at any location within the U.S. service areas of any of the DBS satellite networks serving the U.S. pursuant to a Commission authorization. Upon a showing to the Commission of successful coordination with the operators of those networks, SES Americom, Inc. may operate in a manner consistent with such coordination.
- d. SES Americom's U.S. operations on the AMC-20 satellite are subject to the provisions of Article 4.2 of Appendices 30 and 30A of the ITU Radio Regulations. Even after launch of a satellite that would operate pursuant to an entry in the ITU plan or pursuant to an earlier filed modification, SES Americom, Inc. may continue operations: (i) upon a showing of coordination with such satellite, or (ii) if such satellite is not affected by continued U.S. operations of the AMC-20 satellite and associated earth stations. SES Americom's U.S. operations shall be in compliance with applicable current and future operational requirements as a result of coordination agreements reached with other satellite systems.
- e. Until it has successfully coordinated with affected operators, SES Americom, Inc. must inform its customers that its service is subject to coordination agreements with other operators, both foreign and domestic, and that SES Americom, Inc. may be required to discontinue or alter service, possibly including replacement of subscriber antennas.
- f. SES Americom, Inc.'s DBS operations must be conducted consistent with all rules applicable to Direct Broadcast Satellite service/direct-to-home FCC licensees (*e.g.*, the geographic service requirements of 47 C.F.R. § 25.148(c), the public interest obligations of 47 C.F.R. § 25.701, and the emergency alert system rules in 47 C.F.R. Part 11). In addition, to the extent that SES Americom, Inc. offers television broadcast channels to subscribers pursuant to the statutory copyright license, it must comply with all applicable statutory requirements and Commission rules related to such carriage.
- g. This grant is conditioned upon SES Americom, Inc.'s Gibraltar-issued authorization for the AMC-20 satellite remaining in full force and effect.
- h. SES Americom, Inc. is afforded 30 days from the date of the release of this grant to decline it, as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization, as conditioned.

14. IT IS FURTHER ORDERED that this grant is subject to any rules adopted in response to the Notice of Proposed Rulemaking in IB Docket 06-160.

³³ In particular, SES Americom, Inc. shall not exceed a 0.25 dB change in overall equivalent protection margin with respect to the reference situation that exists for DBS satellites serving the United States.

15. IT IS FURTHER ORDERED that this Declaratory Ruling will become effective upon SES Americom, Inc. filing in the public record in this proceeding: (1) an authorization under the United Kingdom Outer Space Act, or under that Act pursuant to authority granted to the Gibraltar Regulatory Authority, for the space operations of the AMC-20 satellite, and (2) evidence that relevant United Kingdom authorities have committed to register the satellite with the United Nations pursuant to the terms of the Convention on Registration of Objects launched into Outer Space.

16. IT IS FURTHER ORDERED that this grant of market access to SES Americom, Inc. for the AMC-20 space station at the 105.5° W.L. orbital location will be null and void with no further action on the Commission's part if the space station is not constructed, launched, and placed into operation in accordance with the following schedule:

- a. Enter into a binding contract for construction within 1 year (January 16, 2014);
- b. Complete the Critical Design Review within 2 years (January 16, 2015);
- c. Complete construction within 4 years (January 16, 2017);
- d. Launch and begin operations within 6 years (January 16, 2019).

17. IT IS FURTHER ORDERED that SES Americom, Inc. shall file, within thirty business days of completion of Critical Design Review, a revised statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel that will be reserved for post-mission disposal maneuvers. The statement must disclose the altitude selected for a post-mission disposal orbit and demonstrate that the perigee altitude for a post-mission disposal orbit meets the requirements of Section 25.283(a) of the Commission's rules governing end-of-life disposal of geostationary satellite orbit space stations.

18. IT IS FURTHER ORDERED that SES Americom, Inc. must submit annual progress reports that illustrate the steps it has taken toward meeting its milestones. Progress reports will be due every June 30, with the first report due June 30, 2013, until AMC-20 has been launched and is operating.

19. This action is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective immediately. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of release of this Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Robert G. Nelson
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International Bureau