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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
DIRECTV Enterprises, LLC )  
)  
Request for Special Temporary Authority )  
to Relocate DIRECTV 3 to 82° W.L. )  
and to Conduct Telemetry, Tracking and )  
Command Operations )  
for an Interim Period )  
)  
Order Adopting Protective Order )  
)  
DIRECTV Enterprises, LLC )  
)  
Request for Special Temporary Authority )  
to Relocate DIRECTV 5 to 72.5° W.L. )  
and to Conduct Telemetry, Tracking and )  
Command Operations )  
for an Interim Period )

File No. SAT-STA-20030903-00300

File No. SAT-STA-20040107-00002

**REPLY COMMENTS OF SES AMERICOM, INC.**

SES AMERICOM, Inc. (“SES AMERICOM”), by its attorneys, hereby replies to comments of EchoStar Satellite, LLC (“EchoStar”), filed in response to the information (the “Confidential Information”) made available by DIRECTV Enterprises, LLC (“DIRECTV”) pursuant to the Protective Order in the first of the above-captioned proceedings.<sup>1</sup> These proceedings relate to applications of DIRECTV for special temporary authority (“STA”) to move the DIRECTV 3 satellite to the 82° W.L. orbital position (the “82° W.L. STA Application”), and

<sup>1</sup> See Order Adopting Protective Order, File No. SAT-STA-20030903-00300, DA 04-755 (Int’l Bur., Mar. 22, 2004); Comments of EchoStar Satellite, LLC with respect to Information Filed Pursuant to Protective Order, File Nos. SAT-STA-20030903-00300, SAT-STA-20040107-00002, April 5, 2004, redacted for public inspection (the “EchoStar Comments”).

the DIRECTV 5 satellite to the 72.5° W.L. orbital position (the “72.5° W.L. STA Application”).<sup>2</sup> Both of these slots for broadcasting-satellite service (“BSS”) are assigned to Canada under the International Telecommunication Union Plans for the BSS.

In previous filings with the Commission, EchoStar has argued that the Commission should initiate a rulemaking to address the appropriate standards for DBS providers to access the U.S. market via non-U.S. DBS orbital slots.<sup>3</sup> In the instant comments, EchoStar argues that the Confidential Information reinforces EchoStar’s reasons for its proposed rulemaking.<sup>4</sup>

As SES AMERICOM has explained in previous filings, EchoStar’s request for a rulemaking is perplexing.<sup>5</sup> The Commission long ago decided how it would analyze requests to access the U.S. DBS market from foreign-licensed orbital slots.<sup>6</sup> EchoStar has not suggested,

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<sup>2</sup> SES AMERICOM did not oppose the 82° W.L. STA Application, which seeks to lease to Telesat DIRECTV 3, currently in storage orbit, for service to Canada only. SES also did not oppose the 72.5° W.L. STA Application, which, by its terms, does not request authority to provide DBS service to the United States. *See* Petition to Defer and Comments of SES AMERICOM, Inc., File No. SAT-STA-20040107-00002, February 17, 2004, at 2. Rather, SES AMERICOM proposed that the 72.5° W.L. STA Application be deferred until the critical market access issues are addressed, *id.* at 1, and DIRECTV essentially did not oppose such deferral until the Commission rules on its related earth station application, File No. SES-LFS-20040112-00023 (the “Earth Station Application”). Opposition and Reply Comments of DIRECTV Enterprises, LLC, File No. SAT-STA-2004-0107-00002, March 3, 2004, at 2, n.1. SES AMERICOM reserves the right to comment on these issues in the pleading cycle for the Earth Station Application, which was recently placed on public notice. *See Public Notice*, Report No. SES-00590, March 25, 2004.

<sup>3</sup> *See, e.g.*, Comments of EchoStar Satellite L.L.C., File No. SAT-STA-20040107-00002, February 17, 2004 (“EchoStar 72.5° W.L. STA Comments”) at 5.

<sup>4</sup> EchoStar Comments at 2, 3.

<sup>5</sup> *See, e.g.*, Reply Comments of SES AMERICOM, File No. SAT-STA-20040107-00002, March 10, 2004 (“SES AMERICOM 72.5° W.L. STA Reply Comments”) at 3.

<sup>6</sup> 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, 24099 (1997) (“DISCO II Order”).

nor has any other party, that the “effective competitive opportunities” (“ECO-Sat”) test applicable to non-U.S. DBS slots should be reexamined, or that it does not adequately address all U.S. policy concerns relating to the provision of U.S. DBS services from slots licensed by foreign countries, at least for those countries that meet the ECO-Sat test. For countries that do not meet the reciprocity requirements of ECO-Sat, the Commission has chosen to evaluate the specific facts of each proposal on a case-by-case basis.<sup>7</sup> Therefore, there is no need for a rulemaking on DBS service to the United States from non-U.S. licensed slots.

In its comments on the Confidential Information, EchoStar argues that if the Commission were to authorize DIRECTV to provide service to the U.S. from DIRECTV 5 at 72.5° W.L., the Commission would have little choice but to grant a later request to provide such service from DIRECTV 3 at 82° W.L.<sup>8</sup> Putting aside the fact that there have been no requests made to the Commission to provide service in the U.S. from DIRECTV 3 at 82° W.L.,<sup>9</sup> this argument merely points out the fact that a decision on service from DIRECTV 5 at 72.5° W.L. may act as precedent in later decisions on future proposals. Presumably the Commission will have this in mind in evaluating and acting on DIRECTV’s request. In any case, the argument provides no reason for the Commission to abandon its longstanding approach to market access and initiate a rulemaking.<sup>10</sup>

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<sup>7</sup> See Digital Broadband Applications, Corp., File No. SES-LIC-20020109-00023, *Order*, DA 03-1526 (Int’l Bur., May 7, 2003); Pegasus Development Corporation, File Nos. SES-LIC-20011121-02186, SES-LIC-20020111-00075, *Order*, DA 04-909 (Int’l Bur., Mar. 31, 2004).

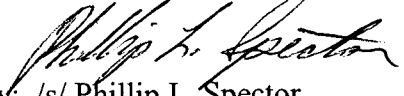
<sup>8</sup> EchoStar Comments at 4.

<sup>9</sup> If the Commission decides to grant the 82° W.L. STA Application, it should make clear in the authorization that grant of the STA does not authorize service to the U.S. from the DIRECTV 3 satellite. No party has proposed such service, and interested parties have not had an opportunity to comment on such a hypothetical scenario.

<sup>10</sup> In its comments, EchoStar also reiterates its view that its proposed rulemaking on non-U.S. slots could occur in the context of a rulemaking (if the Commission decides to initiate one) on reduced orbital spacing of DBS satellites. EchoStar Comments at 3; see EchoStar 72.5° W.L. STA Comments at 3, 8; *Public Notice*, Report No. SPB-196, December 16, 2003. As SES AMERICOM has explained in prior filings, it is entirely

In any event, the issues raised by EchoStar are not relevant to the two instant STA applications, neither of which involves a request to provide DBS or DTH service at all. The U.S. market access issues raised by EchoStar will be addressed soon in the context of DIRECTV's Earth Station Application for the DIRECTV 5 satellite, and SES AMERICOM reserves the right to comment on those issues in that forum.

Respectfully Submitted,

  
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unclear how the issues of DBS orbital spacing and DBS market entry are linked. *See* Reply Comments of SES AMERICOM, Inc., Report No. SPB-196, February 13, 2004, at 25-26; SES AMERICOM 72.5° W.L. STA Reply Comments at 3-4. There have been proposals to offer direct-to-home ("DTH") service from foreign-licensed satellites that do not involve reduced spacing with respect to U.S. satellites, *see* notes 2 and 7 *supra*, and there have been proposals to offer DTH service from domestic-licensed satellites that do. *See, e.g.*, EchoStar Satellite Corporation, Files Nos. SES-LOA-20030606-00107, SES-LOA-20030605-00109, SES-LOA-20030609-00113. As in its past filings on this issue, EchoStar provides no explanation of how it believes the licensing administration of a satellite impacts consideration of the technical issues of reduced orbital spacing. The Commission should reject EchoStar's invitation to tie the technical issues of reduced orbital spacing to the policy issues of U.S. market entry by foreign-licensed satellites.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of SES AMERICOM, Inc. was served this 12th day of April, 2004, by First-Class U.S. Mail, postage prepaid, on the following:

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