

May 4, 2005

BY HAND DELIVERY

Thomas Tycz
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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Policy Branch
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Re: *EchoStar's Proposed Use of Mexican BSS Slot at 77° W.L.*
SAT-STA-20050321-00068

Dear Mr. Tycz:

As you know, DIRECTV Enterprises, LLC ("DIRECTV") currently provides local-into-local programming to 25 markets in the United States from the DIRECTV 5 satellite operating pursuant to a Canadian license at the 72.5° W.L. orbital location assigned to Canada under the Region 2 Broadcast Satellite Service Plan.¹ Recently, EchoStar Satellite L.L.C. ("EchoStar") filed the above referenced application for special temporary authority ("STA") to relocate the EchoStar 4 satellite for operations at the 77° W.L. orbital location assigned to Mexico under the Region 2 Plan. That application is currently on public notice, and comments are due on May 23.²

As discussed below, however, the record of this proceeding does not contain sufficient information to allow the Commission or any interested party to perform the kind of technical analysis necessary to an informed public interest determination. Accordingly, DIRECTV requests that the Commission (1) direct EchoStar to provide a technical description of how the EchoStar 4 satellite would operate at this slot (including

¹ See *DIRECTV Enterprises, LLC*, 19 FCC Rcd. 15529 (Int'l Bur. 2004)(authorizing relocation of DIRECTV 5 and receipt of signals from that Canadian orbital location by small receive dishes in the U.S.).

² See Rep. No. SAT-00286 (rel. April 22, 2005).

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EIRP contours over the U.S.),³ and (2) allow interested parties (including DIRECTV) sufficient time to comment upon the data submitted.

According to EchoStar's STA Application, EchoStar 4 would operate under a Mexican license issued to QuetzSat, S. de R.L. de C.V. ("QuetzSat") at 77° W.L.⁴ The satellite will not be used to provide service in the U.S., and EchoStar has not sought market access from this foreign slot.⁵ While we therefore know what the satellite will *not* be doing, EchoStar has given no indication of what it *will* be doing. The lone indication in the STA Application is EchoStar's assertion that "EchoStar will operate within the parameters of the existing coordination agreements between the administrations of Mexico and Canada for the 77° W.L. orbital location and the adjacent BSS slots (72.5° W.L. and 82° W.L.), which are assigned to Canada."⁶ But all EchoStar proposes to do with the satellite is perform TT&C during its relocation. The application is totally silent with respect to the manner in which *QuetzSat* would operate the communications payload on EchoStar 4 once it reaches 77° W.L.

This is no small matter. EchoStar 4 would be positioned just 4.5° from DIRECTV's operations at 72.5° W.L. – *i.e.*, only half the 9° or greater spacing maintained by every DBS satellite that serves the U.S. market. In other proceedings, DIRECTV has demonstrated the potential for harmful interference arising from such short-spaced operations.⁷ Indeed, EchoStar has recently raised similar concerns.⁸

There have been four recent applications involving the proposed operation of a U.S. DBS satellite at a non-U.S. slot. In three of those cases – including one filed by EchoStar – technical information on the satellite's proposed operations was provided with the related application for market access to serve the U.S.⁹ In the fourth such case –

³ Although the Commission has requested additional information from EchoStar in this proceeding, that information does not relate to the operational data discussed herein. See Letter from Thomas Tycz to Pantelis Michalopoulos (dated April 13, 2005).

⁴ STA Application at 2.

⁵ *Id.* at 4.

⁶ *Id.* at 3 (emphasis added). DIRECTV would note that there is no coordination agreement between the Canadian and Mexican administrations with respect to the 72.5° W.L. and 77° W.L. slots.

⁷ See, e.g., DIRECTV filings in SAT-PDR-20020425-00071.

⁸ See, e.g., Letter from Pantelis Michalopoulos to Marlene H. Dortch, FCC Docket No. SPB-196 (dated March 25, 2005)(short spacing "raises certain technical difficulties").

⁹ See SES-MFS-20050427-00499 (technical information on proposed operation of DIRECTV 1 at 72.5° W.L. Canadian BSS slot); SES-LFS-20050203-00133 (technical information on proposed operation of EchoStar 5 at 129° W.L. Canadian BSS slot); SES-LFS-20040112-00023 (technical information on proposed operations of DIRECTV 5 at 72.5° W.L. Canadian BSS slot).

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where, as here, no U.S. service was contemplated – DIRECTV did not submit technical information. However, unlike this proceeding, that case involved proposed operations at orbital positions that were at least 10° away from any BSS slot serving the U.S.¹⁰ Not surprisingly, no one in that proceeding raised any technical issues related to potential interference concerns. The proposed operations of EchoStar 4, by contrast, contemplate only 4.5° of orbital separation.

Without technical information on how EchoStar 4 would operate, DIRECTV has no way of knowing what impact that satellite would have on the hundreds of thousands of subscribers who currently receive DIRECTV service from 72.5° W.L. To be sure, it is possible that there may be little or no such impact. For example, given that no service in the U.S. is contemplated at this time, it is possible that the satellite's beam will be aimed primarily or even exclusively at Mexico. Or, if QuetzSat plans to provide something other than a mass market service to small receive dishes, perhaps it will operate the satellite at power levels far below the maximums included in the Mexican ITU filing. If this were the case, the proposed operation of EchoStar 4 at 77° W.L. might have minimal impact on DIRECTV's service from 72.5° W.L. On the other hand, QuetzSat might intend to operate EchoStar 4 in a manner that would cause the maximum possible interference to DIRECTV's U.S. subscribers even though there is no service to U.S. customers from that satellite. Such an outcome would plainly be at odds with the public interest.

The point here is not that EchoStar's application necessarily disserves the public interest. Rather, given the total lack of data available, there is no way for DIRECTV or any other interested party to perform the technical analysis necessary to make this determination, and therefore no way to comment meaningfully upon EchoStar's STA Application. More importantly, there is no way for the Commission to make a fully informed public interest determination without assessing such information.

Accordingly, DIRECTV requests that the Commission (1) direct EchoStar to provide a technical description of how the EchoStar 4 satellite would operate at this slot (including EIRP contours over the U.S.), and (2) allow interested parties (including DIRECTV) sufficient time to comment upon the data submitted.

Respectfully submitted,



William M. Wiltshire
Counsel for DIRECTV Enterprises, LLC

¹⁰ See *DIRECTV, Inc.*, 19 FCC Rcd. 11055 (Int'l Bur. 2004) (authorizing use of DIRECTV 3 satellite for service to Canada from either 82° W.L. or 91° W.L.).

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cc: Marlene H. Dortch, Secretary
Pantelis Michalopoulos (counsel for EchoStar)