

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
DISH OPERATING L.L.C)	File No. SAT-STA-20100219-00033
)	
Application for Special Temporary)	
Authority to Operate the EchoStar 14)	
Satellite at 118.9° W.L)	
_____)	

OPPOSITION OF SPECTRUM FIVE LLC

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Spectrum Five LLC (“Spectrum Five”) hereby files this Opposition to the Application of DISH Operating L.L.C. (“DISH”) for 60-day Special Temporary Authority, beginning on May 1, 2010, to operate DISH’s EchoStar 14 satellite at 118.9° W.L. in accordance with the specifications in DISH’s application for “full authority” for EchoStar 14 (“STA Application”).¹

DISH has utterly failed to satisfy—or even address—the Commission’s regulatory requirements for STAs. The Commission’s regulations require an applicant to establish the *necessity* of immediate or temporary use of facilities, or to provide evidence sufficient for a finding that “*extraordinary circumstances*” require temporary operations “in the public interest” and that delay “would *seriously prejudice*” the public interest.² DISH has made no such showing here. Moreover, DISH’s public interest arguments are meritless. Far from promoting public interests, the contemplated operation of EchoStar 14 outside the parameters of the current International Telecommunication Union (“ITU”) Region 2 BSS Plan would *harm* consumer interests. In addition, DISH has made no effort to explain how, consistent with ITU rules, the Bureau could authorize EchoStar 14 to operate for *any period of time* at power and coverage levels that exceed the technical parameters permitted for EchoStar 7, in the absence of coordination. Thus, DISH’s request is inconsistent with U.S. treaty obligations.

DISH’s STA Application is not based on a need for urgent interim action in order to avoid harm to the public interest, but rather is the result of DISH’s desire to bring EchoStar 14 into operation by May 1, 2010, regardless of the need for ordered processing of space station applications by the Bureau and the requirements of ITU coordination. DISH’s unilateral wish to

¹ See Application for Special Temporary Authority, File No. SAT-STA-20100219-00033, at p. 1 (filed Feb. 19, 2010) (“STA Application”), citing File No. SAT-LOA-20090518-00053, Call Sign S2790 (filed May 18, 2009); amended by File Nos. SAT-AMD-20090604-00064 (filed June 4, 2009) (“EchoStar 14 Application”); SAT-AMD-20100212-00027 (filed Feb. 12, 2010).

² 47 C.F.R. § 25.120(a) & (b)(1) (emphasis added).

bring EchoStar 14 into operation prematurely is not the proper basis for an STA. As Spectrum Five no proceeds to show, the STA Application should be denied.

ARGUMENT

A. DISH Has Not Satisfied The Requirements For Special Temporary Authority

Applications for Special Temporary Authority are governed by Section 25.120 of the Commission's regulations.³ Section 25.120 permits the granting of Special Temporary Authority only in "circumstances *requiring* immediate or temporary use of facilities"⁴ and "only upon a finding that there are *extraordinary circumstances* requiring temporary operations in the public interest and that delay in the institution of these temporary operations would *seriously prejudice* the public interest. *Convenience to the applicant . . . will not be deemed sufficient for this purpose.*"⁵ DISH has not even attempted to address these requirements, much less shown that it satisfies them.

The basis for DISH's STA Application is set forth in nine lines of text on page 2 of the application. DISH contends that the same public interest considerations that allegedly support its 2009 EchoStar 14 Application⁶ justify the requested Special Temporary Authority.⁷ This perfunctory discussion of why Special Temporary Authority should be granted focuses solely on the alleged public interests that would be served by EchoStar 14 and expressly incorporates by

³ 47 C.F.R. § 25.120.

⁴ 47 C.F.R. § 25.120(a) (emphasis added).

⁵ 47 C.F.R. § 25.120(b)(1) (emphasis added).

⁶ See note 1, *supra*.

⁷ See STA Application at 2 ("EchoStar 14 will allow DISH to improve and expand its services from the 119 [sic] W.L. orbital location. For the same reasons described in [the EchoStar 14 Application] and incorporated herein by reference, so too will the requested STA serve the public interest. . . . The requested STA will ensure DISH is able to bring the technically advanced satellite into service as soon as possible to improve the services available to its customers if its pending application is still under consideration at the time.").

reference the discussion of those public interests from its EchoStar 14 Application. But nothing in the EchoStar 14 Application or in the STA Application establishes that there are “circumstances *requiring* immediate or temporary use of facilities” or provides any basis for a “finding that there are *extraordinary circumstances* requiring temporary operations in the public interest and that delay in the institution of these temporary operations would *seriously prejudice* the public interest.”⁸ By merely pointing to arguments made in the EchoStar 14 Application, DISH fails to satisfy the standards required for Special Temporary Authority. In fact, DISH has not even adverted to these standards, suggesting that DISH either does not recognize the differences between the standards for regular authorization and Special Temporary Authority, or knows that it cannot possibly satisfy the standards for Special Temporary Authority.

In addition, DISH has utterly failed to explain the urgency of replacing EchoStar 7, a satellite launched in 2002. DISH has not alleged that EchoStar 7 is impaired, and thus in need of “immediate” replacement.⁹ Thus, under the Commission’s regulations, DISH has not established its entitlement to Special Temporary Authority for the operation of EchoStar 14—a satellite that will have a substantial negative impact on Spectrum Five’s authorized service to the United

⁸ 47 C.F.R. § 25.120(a) and (b)(1) (emphasis added).

⁹ In its Form 10-K for the Fiscal Year Ended December 31, 2008 (dated as of March 2, 2009), DISH Network Corporation stated that “[d]uring 2006, EchoStar VII experienced an anomaly which resulted in the loss of a receiver.” *See id.* at pp. 8, F-27. This “anomaly” was not invoked as a basis for the EchoStar 14 Application (or even mentioned in that Application), and DISH Network’s Form 10-K went on to note that “[s]ervice was quickly restored through a spare receiver” and “[t]he design life of the satellite *has not been affected* and the anomaly is not expected to result in the loss of other receivers on the satellite.” Form 10-K at pp. 8, F-27 (emphasis added). DISH did go on to note, however, if the “spare receiver placed in operation following the 2006 anomaly also fails, there would be no impact to the satellite’s ability to provide service to the entire continental United States (‘CONUS’) when operating in CONUS mode. However, we would lose one-fifth of the spot beam capacity when operating in spot beam mode.” *Id.* at F-27.

States from the 114.5° W.L. orbital location. Accordingly, the STA Application should be denied.

B. Spectrum Five Already Rebutted DISH’s “Public Interest” Arguments

DISH’s failure to satisfy the requirements of Section 25.120 suffices to doom the STA Application. Nevertheless, Spectrum Five will briefly address the “public interest” arguments on which DISH relies.

As noted above, DISH predicates the STA Application solely on the public interest considerations that allegedly support the EchoStar 14 Application. Yet in the STA Application, DISH completely ignores Spectrum Five’s rebuttal of those very arguments, which Spectrum Five made in its Reply in Support of Petition of Spectrum Five LLC for Imposition of Conditions (“Spectrum Five’s EchoStar 14 Reply”) in the still-pending EchoStar 14 proceeding.¹⁰

In Spectrum Five’s EchoStar 14 Reply, Spectrum Five pointed out that consumers would not be harmed by requiring operators to conform to the parameters of the existing Region 2 Broadcasting Satellite Service (“BSS”) Plan until that Plan is duly modified.¹¹ U.S. consumers, however, *would* be harmed if satellites were permitted to operate outside the Region 2 BSS Plan parameters until higher-priority satellites become operational. Consumers would find it impossible to make an informed choice of a Direct Broadcast Satellite (“DBS”) provider if, in the ordinary course, service and channel offerings might have to be eliminated when a higher-priority satellite is launched.¹² As Spectrum Five explained,

¹⁰ See Reply in Support of Petition of Spectrum Five LLC for Imposition of Conditions, File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064, Call Sign S2790, at pp. 9-10 (filed Oct. 22, 2009).

¹¹ Spectrum Five’s EchoStar 14 Reply at p. 9.

¹² *Id.*

[C]onsumer interests would not be served by allowing DISH to operate EchoStar 14 at power levels that would have to be terminated if it proves impossible to modify the Region 2 BSS Plan to permit EchoStar 14 to operate at its proposed excessive power levels. Far from being well served if DISH is permitted to operate outside of the Plan, consumers would, in fact, be frustrated and confused if DISH was subsequently required to reduce EchoStar 14's power levels, and therefore remove channels from service. Rather than create such a problem, the Bureau should require EchoStar 14 to adhere to the limits of the Plan until coordination is achieved. Such an outcome would avoid unnecessary consumer frustration and confusion.¹³

Based on similar reasoning, the Bureau denied an STA application for DBS service filed by EchoStar Satellite Corporation (DISH's predecessor in interest), concluding that, because consumers would lose programming arrangements at the end of the STA operating period, a grant of the STA would "likely cause consumer confusion" and "customer complaints" once the end of the STA period brought a reduction in service.¹⁴ Here, if DISH's STA is granted without conditions mandating operations in accordance with the current parameters of EchoStar 7, consumers would similarly lose services and experience confusion and frustration in the event that any grant of the 2009 EchoStar 14 Application includes a condition requiring that EchoStar 14 be operated at reduced power levels in conformity with the existing Region 2 BSS Plan, or if DISH is required to reduce such power levels absent coordination.

DISH, however, has neither requested that any grant of Special Temporary Authority be predicated upon EchoStar 14 operating at reduced power levels in conformity with the existing Region 2 BSS Plan nor responded to Spectrum Five's demonstration that the public interest would *not* be served by EchoStar 14's operations outside the parameters of the existing Region 2 BSS Plan.

¹³ *Id.* at p. 10.

¹⁴ See Order, *In re EchoStar Satellite Corp. Application for Special Temporary Authority to Operate a Direct Broadcast Satellite*, 11 FCC Rcd. 16455, paras. 6, 7 (rel. Nov. 26, 1996).

Thus, even if DISH had not been required to establish “circumstances *requiring* immediate or temporary use of facilities” and grounds for a “finding that there are *extraordinary circumstances* requiring temporary operations in the public interest and that delay in the institution of these temporary operations would *seriously prejudice* the public interest,”¹⁵ DISH’s public interest arguments, could not support the STA Application.¹⁶

C. DISH Has Not Established That Special Temporary Authority To Operate EchoStar 14 Would Be Consistent With ITU Rules And Regulations

As previously noted, DISH is seeking to replace its currently operating EchoStar 7 satellite with EchoStar 14. As Spectrum Five demonstrated in the Petition of Spectrum Five for the Imposition of Conditions (“Spectrum Five’s EchoStar 14 Petition”)¹⁷ and in Spectrum Five’s EchoStar 14 Reply,¹⁸ EchoStar 14 is a “radical redesign” of EchoStar 7, with dramatically increased power levels and different coverage patterns.¹⁹ EchoStar 14’s higher power levels and new coverage patterns would deviate substantially from the parameters set forth in the ITU Region 2 BSS Plan for the USABSS-31 entry that is represented by EchoStar 7, and would

¹⁵ 47 C.F.R. § 25.120(a) & (b)(1) (emphasis added).

¹⁶ At a minimum, any grant of DISH’s STA Application must include the kind of public notification conditions typically imposed on STA grants. *See, e.g.,* Order and Authorization, *In re EchoStar Satellite Corporation Application for Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the 61.5° W.L. Orbital Location and Rainbow DBS Company LLC Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the 61.5° W.L. Orbital Location*, 18 FCC Rcd. 19825, at paras. 19-21 (rel. Oct. 21, 2003); Order and Authorization, *In re EchoStar Satellite Corporation Application for Authority to Make Minor Modification of Direct Broadcast Satellite & Application for a Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite over the Even-Numbered Channels at the 148° W.L. Orbital Location*, 18 FCC Rcd. 7886, at para 23 (rel. Apr. 25, 2003).

¹⁷ *See* Petition of Spectrum Five LLC for Imposition of Conditions, File Nos. SAT-LOA-20090518-00053, SAT-AMD-20090604-00064, Call Sign S2790 (filed Oct. 5, 2009).

¹⁸ *See supra* note 10.

¹⁹ Spectrum Five’s EchoStar 14 Reply at p. 1. *See also* Spectrum Five’s EchoStar 14 Petition at pp. 2, 4-8.

interfere materially with Spectrum Five’s higher-priority satellite network at the 114.5° W.L. orbital location.²⁰ Moreover, DISH has neither attempted to coordinate with Spectrum Five nor shown that coordination is feasible.²¹

Spectrum Five also demonstrated that allowing DISH to deviate from the Region 2 BSS Plan until the launch and operation of a higher-priority satellite that is threatened with interference would be inconsistent with ITU rules:

Article 3.1 of Appendix 30 to the ITU Radio Regulations states that “Member States shall not change the characteristics specified in the . . . Region 2 Plan, *or bring into use* assignments to broadcasting-satellite space stations . . . except as provided for in the Radio Regulations and the appropriate Articles and Annexes of this Appendix.” Article 4 of Appendix 30, in turn, requires coordination for changes in the Region 2 BSS Plan.²²

As the Bureau has previously concluded: “The United States is under a treaty obligation, in connection with its membership in the ITU, to adhere to the ITU procedures regarding coordination and notification of space station systems licensed by the United States.”²³

For these reasons, Spectrum Five argued that any authorization to launch and operate EchoStar 14 should be conditioned on EchoStar 14 operating within the existing Region 2 BSS Plan entry for the 119° W.L. orbital location, absent coordination.²⁴ In its STA Application,

²⁰ See Spectrum Five’s EchoStar 14 Petition at pp. 2, 4-8; Spectrum Five’s EchoStar 14 Reply at pp. 1, 3.

²¹ See Spectrum Five’s EchoStar 14 Petition at pp. 8-10; Spectrum Five’s EchoStar Reply at pp. 7-9.

²² Spectrum Five’s EchoStar Reply at pp. 3-4 (quoting ITU Radio Regulation, App. 30, art. 3.2 (emphasis added). and citing *id.* at App. 30, art. 4.2).

²³ *In re Intelsat North America LLC*, File Nos. SAT-LOA-20050210-00030, SAT-AMD-20051118-00239, SAT-AMD-20080114-00009, SAT-AMD-20080617-00124, SAT-AMD-20080701-00137, Call Sign S2661, DA 09-1132, 24 FCC Rcd. 7058, 7066 (para. 18) (rel. May 26, 2009) (footnote omitted).

²⁴ See Spectrum Five’s EchoStar 14 Petition at pp. 10-13; Spectrum Five’s EchoStar 14 Reply at pp. 3-6.

DISH ignores these issues entirely and makes no attempt to establish that the Bureau can—consistent with the treaty obligations of the United States in connection with its membership in the ITU—provide a 60-day Special Temporary Authority for the operations of EchoStar 14 at the 118.9° W.L. orbital location in the absence of coordination. Thus, even if DISH had satisfied the specific requirements for grants of Special Temporary Authority—which it did not even address—DISH has not explained how such authority could be granted under ITU rules and regulations.

At most, absent coordination, DISH could be authorized to provide service within the operational parameters and power levels of the existing EchoStar 7 satellite.

CONCLUSION

DISH has not even addressed, much less satisfied, the requirements for Special Temporary Authority. Nor has it answered Spectrum Five’s rebuttal of the public interest arguments that it incorporates by reference into its STA Application. In addition, DISH has not shown how, consistent with the United States’ international treaty obligations, the Bureau can grant Special Temporary Authority for EchoStar 14’s operations at the 118.9° W.L. orbital location. Thus, the STA Application should be denied.

Respectfully submitted,

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March 10, 2010

CERTIFICATE OF SERVICE

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