

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

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

REPLY TO OPPOSITION

DISH Operating L.L.C. (“DISH”) replies to the opposition filed by Spectrum Five LLC to DISH’s above-referenced request for 60-day Special Temporary Authority (“STA”).¹ On the same day that Spectrum Five filed its opposition, the Commission rejected Spectrum Five’s arguments when it granted, in part, DISH’s application for permanent authority.² Spectrum Five’s new pleading contains nothing of substance that is new. In addition, while grant of the EchoStar 14 application has mooted the STA request in part – and has mooted the opposition to

¹ DISH is requesting STA, beginning on May 1, 2010, to operate the EchoStar 14 satellite at 118.9° W.L. on the 21 Direct Broadcast Satellite (“DBS”) channels already licensed to DISH at the 119° W.L. nominal orbital location in accordance with the specifications described in its application for full authority, including its recently filed amendment. *See* DISH Operating L.L.C., File No. SAT-STA-20100219-00033LOA-20090518-00053, Call Sign S2790 (filed February 19, 2010); *see also* DISH Operating L.L.C., File No. SAT-AMD-20100212-00027 Call Sign S2790 (filed Feb. 12, 2010) (“Second Amendment to EchoStar 14 Application”).

² DISH Operating L.L.C., Call Sign S2790, *Order and Authorization*, DA 10-407 (rel. March 10, 2010) (“*EchoStar 14 Order*”) (granting, in part, DISH’s request to launch and operate the EchoStar 14 satellite at 118.9° W.L. and deferring action on the Second Amendment to EchoStar 14 Application).

it in whole – one portion of the STA request is still necessary to provide DISH with authority to operate on the channels that are the subject of DISH’s recent amendment request.

I. *ECHOSTAR 14 ORDER* MOOTS SPECTRUM FIVE’S OPPOSITION

Even Spectrum Five admits that its opposition to DISH’s STA application is predicated on the same arguments that it made in opposing DISH’s application for full authority to operate at 118.9° W.L.³ As before, Spectrum Five opposed DISH’s request on the grounds that the EchoStar 14 satellite “will have a substantial negative impact on Spectrum Five’s authorized service to the United States.”⁴ Spectrum Five argues that consumers would be “harmed if satellites were permitted to operate outside the Region 2 BSS Plan parameters until higher-priority satellites become operational.”⁵ Spectrum Five also contends 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 is inconsistent with ITU rules.”⁶

Ironically, on the very same day Spectrum Five filed its opposition, the International Bureau issued the *EchoStar 14 Order* granting DISH authority to launch and operate a DBS satellite at the 118.9° W.L. orbital location. The Bureau rejected Spectrum Five’s arguments because they “would impose greater restrictions on EchoStar 14’s operations than are contemplated by our rules or are required by our international obligations, and would unnecessarily constrain EchoStar 14’s operations.”⁷

³ See Spectrum Five Opposition at 4 (arguing that DISH’s public interest considerations supporting STA are the same supporting the permanent application and repeating Spectrum Five’s opposition to the then “still-pending EchoStar 14 proceeding.”).

⁴ *Id.* at 3-4.

⁵ *Id.* at 4.

⁶ *Id.* at 7.

⁷ *EchoStar 14 Order* ¶ 1.

The Bureau fully considered Spectrum Five’s proposed restrictions and noted they might be appropriate on “DBS satellites when their operations could adversely affect ongoing operations of other satellite systems.”⁸ But the Bureau understood the facts in the instant case, rejecting Spectrum Five’s arguments because “Spectrum Five ... is not yet operating a satellite at 114.5° W.L. Thus, there is no evidence to indicate an imminent commencement of operations by an ‘affected network’ under the ITU Radio Regulations.”⁹ Instead of acceding to Spectrum Five’s request, therefore, the Bureau imposed on DISH the standard condition relating to international coordination – a condition with which DISH is fully prepared to comply.

Because the Bureau has fully considered these arguments and rejected them, there is no reason for the Bureau to do anything but summarily dismiss Spectrum Five’s opposition as repetitive and grant DISH the requested STA.

II. DISH STILL REQUIRES THE STA FOR ECHOSTAR 14 OPERATIONS

While the *EchoStar 14 Order* effectively moots the need for the FCC to consider Spectrum Five’s meritless opposition, DISH still needs the requested STA, in part, and a grant therefore remains in the public interest.

A. The *EchoStar 14 Order* Contained a Partial Deferral.

The *EchoStar 14 Order* granted DISH authority to launch, and operate EchoStar 14 at 118.9° W.L. But, so far, only one of the two amendments DISH filed to its application has been granted. The Second Amendment to the EchoStar 14 Application was only recently filed and the

⁸ *Id.* ¶ 10.

⁹ *Id.*

Bureau deferred granting it in the *EchoStar 14 Order* so it can be reviewed in the normal course of its application processing procedures.¹⁰

The amendment provides updated information regarding EchoStar 14's antennas based on the actual tests to which EchoStar's contractor submitted these antennas and requests a waiver of the FCC's rule to the extent necessary to accommodate the cross-polarization isolation performance of certain transmit and receive spot beams. The STA request incorporates the minor updates reflected in the amendment. None of Spectrum Five's arguments against DISH's STA request is specific to the cross polarization waiver request. Granting the STA request will allow DISH to test and operate EchoStar 14 in the proper and technically efficient manner subject to a no interference condition while the Bureau completes its review of the amendment.

B. The STA Request Meets FCC STA Standards.

DISH's request is consistent with the requirements of Section 25.120, 47 C.F.R. § 25.120. Indeed, rejecting it would prevent the full operation of the satellite during a critical time period – testing and initiation of service. Spectrum Five, having never launched or operated a satellite, ignores FCC practice and precedent by suggesting that DISH's STA request is merely for “convenience to the applicant.” Spectrum Five chooses to ignore by its use of ellipses what Section 25.120 makes clear: “convenience to the applicant” refers to items like “marketing considerations” or “meeting scheduled customer in-service dates.” The testing and operation of a just-launched space station is an “extraordinary” and technologically advanced circumstance that often requires temporary operations in the public interest. And the Bureau has consistently granted STA requests to facilitate such early operations.

¹⁰ See *EchoStar 14 Order* ¶ 2 & n.6. The Second Amendment to EchoStar 14 Application is currently in the standard public notice and comment period. See Policy Branch Information Public Notice, Rept. No. SAT-00667 (rel. Feb. 26, 2010).

C. The STA Request Promotes the Public Interest.

DISH's request is in the public interest because it will ensure DISH is able to bring the technically advanced EchoStar 14 satellite fully into service, as soon as possible and in the most technically efficient manner possible. This will, in turn, ensure that American consumers are able to receive improved services.

D. The STA Request Is Consistent with ITU Coordination Practices.

As noted above, the *EchoStar 14 Order* found that launch and operation of the EchoStar 14 satellite is consistent with ITU coordination practices and will not undermine coordination at a later date with a real satellite when it is ready to be brought into use. Nothing in the pending amendment or the STA would undermine any future coordination.

III. CONCLUSION

The Bureau has already rejected the arguments made by Spectrum Five in its Opposition to DISH's STA request. The Bureau should grant DISH's STA request to the extent it is not mooted by the grant to DISH of permanent operating authority.

Respectfully submitted,

DISH Operating L.L.C.

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CERTIFICATE OF SERVICE

I, Christopher Bjornson, hereby certify that on this 22nd day of March, 2010, I caused the foregoing to be served by hand delivery and electronic mail, upon the following:

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