

Space.³ EchoStar 6 is licensed by the Commission for operations at the 61.65° W.L. orbital location,⁴ and the Commission has approved ESOC's plan for disposal of the satellite to an orbit with a minimum perigee of 300 kilometers above the geostationary arc.⁵ EchoStar 6 is currently operating under STA at the 76.8° W.L. orbital location.⁶

4. ESOC proposes that, while at 96.2° W.L., EchoStar 6 would operate "pursuant to" the BERMUDASAT-1 filing and any associated coordination agreements, but would remain a U.S.-licensed satellite operating under Commission jurisdiction. ESOC included with its application a letter from the Bermuda Department of Telecommunications indicating its concurrence with this approach.⁷

5. Two parties opposed the request. DIRECTV Enterprises LLC (DIRECTV) raised concerns about the impact of the proposal on the ITU filings under which its established Direct Broadcast Satellite (DBS) service at 101° W.L. operates.⁸ DIRECTV subsequently concluded an operator-to-operator arrangement with SES Bermuda, and withdrew its opposition, contingent upon U.K. and U.S. ratification of the arrangement.⁹ Spectrum Five raised concerns about the impact of the proposal on the U.S. licensed Broadcasting-Satellite Service (BSS) satellite that it plans to operate in the future using 17/24 GHz frequencies at the 95.15° W.L. orbital location. Spectrum Five also raised concerns about the potential impact of ESOC's proposal on an ITU filing in the 12.2-12.7/17.3-17.8 GHz frequency band made on Spectrum Five's behalf by the Netherlands.¹⁰ The Netherlands Administration also raised concerns

³ The satellite's international designation number is 2000-038A, and the registration document is ST/SG/SER.E/379 (25 January, 2001), available at: http://www.unoosa.org/oosa/download.do?file_uid=1482.

⁴ See IBFS File No. SAT-MOD-20100720-00164.

⁵ See File No. SAT-A/O-20100203-00019 (grant dated July 7, 2010).

⁶ See IBFS File No. SAT-STA-20121203-00207.

⁷ See ESOC STA Request at Exhibit 1: Letter from Jeane Nikolai, Acting Director of Telecommunications, Bermuda Department of Telecommunications, to Fern Jarmulnek, Acting Chief, Satellite Division, International Bureau, Federal Communications Commission (Feb. 20, 2013).

⁸ Letter from William M. Wiltshire, counsel for DIRECTV Enterprises LLC, to Marlene H. Dortch, Secretary, FCC (Feb. 25, 2013). See also letters and notifications of *ex parte* presentations dated March 4, 12, 18, 19, and 21, 2013, from William M. Wiltshire, counsel for DIRECTV Enterprises LLC, to Marlene H. Dortch, Secretary, FCC. The Direct Broadcast Satellite service is the term used in the United States to denote what is identified internationally as the Broadcasting-Satellite Service operating in the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands.

⁹ Letter from William M. Wiltshire, counsel for DIRECTV Enterprises LLC, to Marlene H. Dortch, Secretary, FCC (March 27, 2013).

¹⁰ Letter from Todd M. Stansbury, counsel for Spectrum Five LLC, to Marlene H. Dortch, Secretary, FCC (March 12, 2013) (*Spectrum Five Opposition*). See also letters and notifications of *ex parte* presentations dated March 20, 28, and 29, and April 1, 2013 from Todd M. Stansbury, counsel for Spectrum Five LLC, to Marlene H. Dortch, Secretary, FCC. Spectrum Five also raised a number of concerns related to ESOC's application, IBFS File No. SAT-MOD-20130227-00026, for regular authority to operate at the 96.2° W.L. orbital location. Those concerns will be treated in connection with that application, and our action here is without prejudice to any action with respect to that application. Spectrum Five also raised concerns that appear to be related to potential future requests by ESOC or SES Bermuda, or other parties, to provide service in the U.S. market. Our action here is also without prejudice to any action with respect to any such request. Furthermore, as we are not granting by today's action any authority for DBS service to the United States, action here is without prejudice to the outcome of IB Docket No. 06-160.

related to its ITU filing.¹¹ The Government of Bermuda (Bermuda), through its Ministry of Economic Development, filed a letter supporting grant of ESOC's request.¹² Bermuda, noting its longstanding relationship with the U.S., emphasized the importance of the 96.2° W.L. orbital location to Bermuda's social and economic development, as the location will result in the first direct service by broadcasting satellite to Bermuda.¹³ ESOC filed a number of *ex parte* notifications and statements.¹⁴

III. DISCUSSION

6. In the following discussion, we address the concerns raised by Spectrum Five and the Netherlands Administration. We conclude that none of the concerns raised warrant a denial or delay in the grant of ESOC's STA request. We also clarify certain matters that we believe may have given rise to unnecessary concerns.

7. ***Threshold criteria for issuance of STA.*** Under Section 309(c)(1)(G) of the Communications Act of 1934, as amended, we are authorized to grant STAs for nonbroadcast operation not to exceed 60 days pending the filing of an application for regular operation.¹⁵ Under Section 25.120(b)(1) of the Commission's rules, we grant STA applications 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."¹⁶

8. Spectrum Five argues that ESOC seeks temporary authority, rather than waiting for normal processing of its application for regular authority, due to the April 14, 2013 ITU deadline for the U.K. to have a satellite at the 96.2° W.L. orbit location for purposes of bringing the BERMUDASAT-1 filing into use.¹⁷ We agree with Spectrum Five's assessment. However, assessment of the motivations of non-U.S. commercial operators related to their tactical approach to ITU filing matters does not provide an

¹¹ Letter from R. Agema, Head of the Market Access Department, Radio Communications Agency Netherlands, on behalf of the Minister of Economic Affairs, to Roderick K. Porter, Deputy Chief, FCC International Bureau (Mar. 28, 2013) (Netherlands Views).

¹² Letter from Dr. the Honorable E. Grant Gibbons, JP MP, Minister of Economic Development, Government of Bermuda, to Julius Genachowski, Chairman, FCC (filed April 1, 2013).

¹³ *Id.*

¹⁴ Letters dated February 27 and March 7, 2013, from Pantelis Michalopoulos, Counsel for ESOC, and Karis Hastings, Counsel for SES, S.A., to Marlene H. Dortch, Secretary, FCC; Letters dated March 11 and 13, 2013, from Dean Manson, Executive Vice President and General Counsel, ESOC, to Marlene H. Dortch, Secretary, FCC; Letters dated March 13 and 29, 2013, from Stephanie A. Roy, Counsel for ESOC to Marlene H. Dortch, Secretary, FCC; Letters dated March 18, 20, 27 and April 1, 2013, from Brian A. Tramont, Counsel for ESOC, to Marlene H. Dortch, Secretary, FCC; Letter dated March 29, 2013, from Anders N. Johnson, President, EchoStar Satellite Services LLC to Marlene H. Dortch, Secretary, FCC.

¹⁵ 47 U.S.C. § 309(c)(1)(G).

¹⁶ 47 C.F.R. § 25.120(b)(1).

¹⁷ Spectrum Five Opposition at 1-3. "Bringing into use" is a term of art within the ITU process that denotes one of the eligibility criteria for entering a satellite filing in an ITU list or registry. Other criteria, depending on the particular provisions of the ITU Radio Regulations for the frequency band involved, can include prior agreement by Administrations that may be affected by the operations. Once entered into a list or registry, the filing is entitled to international recognition. ESOC's application for regular authority is subject to requirements for a 30 day public notice and comment period, and thus, based on its filing date and the time needed to relocate the satellite, could not be acted on consistent with the April 14 deadline. The modification application was filed February 27, and at that time ESOC specified a "need by" date for commencement of the move of March 12. ESOC STA Request, Narrative at 1. Following completion of the operator-to-operator arrangement between DIRECTV and SES Bermuda, ESOC requested action not later than April 1. ESOC March 28 *ex parte* statement at 2.

appropriate basis for determining whether an STA would serve the public interest. This approach potentially would place the Commission in the inappropriate role of an arbiter for disagreements primarily involving other Administrations.¹⁸

9. We find that there are extraordinary circumstances, within the meaning of our rules, for a grant of ESOC's request. In reaching this conclusion, we interpret the term "extraordinary circumstances" in light of the unique features of the Commission's licensing rules, procedures and practices for geostationary satellites. Under ordinary circumstances, such satellites operate and are maintained at regularly authorized orbital locations within the geostationary arc, through the use of propulsion systems ultimately controlled using radio commands. A need on the part of a licensee to move a geostationary satellite, viewed within this context, and in this specific case in light of the DIRECTV/SES Bermuda operator-to-operator arrangement and ESOC/SES Bermuda commitments concerning Spectrum Five's U.S. licensed 17/24 BSS satellite, provides the necessary extraordinary circumstances. Our practice has been to address similar requests through the mechanism of STAs, as they provide an appropriate short term licensing mechanism to address the transit of a satellite from one location to another, and, in some circumstances, to establish operations at the new location.¹⁹ Allowing satellite operations at an unused orbit location on a temporary basis is in the public interest because it permits the public to receive services that would otherwise not be available.²⁰ This is particularly true in this case because the EchoStar 6 satellite is being used only as a secondary back-up satellite at its current location, and can with a grant of the STA be put to use for communications.²¹

10. With the completion of an operator-to-operator arrangement between DIRECTV and SES Bermuda, and, as discussed more fully below, based on ESOC and SES Bermuda's assurances concerning Spectrum Five's U.S.-licensed satellite, we find that the proposed EchoStar 6 operations will have no foreseeable adverse impact on U.S.-licensed operations or related U.S. ITU filings. Furthermore, we find, based on information provided by ESOC,²² that no operating satellite will experience harmful interference from EchoStar 6's proposed operations as a result of this STA grant. In light of the DIRECTV/SES Bermuda operator-to-operator arrangement, delay could place the Commission in the position of resolving through inaction a potential dispute between other Administrations concerning the application of the ITU Radio Regulations to their respective filings. Considering all of the circumstances, we find that delay at this point would seriously prejudice the public interest.

11. **DBS Processing Freeze.** In 2005, the Commission adopted a freeze on applications for authority to provide DBS service to the United States using the 12.2-12.7 GHz band and associated feeder

¹⁸ Cf. Application of DIRECTV Enterprises, LLC, Request For Special Temporary Authority for the DIRECTV 5 Satellite and Request for Blanket Authorization for 1,000,000 Receive Only Earth Stations to Provide Direct Broadcast Satellite Service in the U.S. using the Canadian Authorized DIRECTV 5 Satellite at the 72.5° W.L. Broadcast Satellite Service Location, 19 FCC Rcd 15529, 15536, ¶ 19 (indicating that the FCC was not in a position to resolve issues related to the ITU filings of two other Administrations).

¹⁹ See DIRECTV Enterprises, LLC, *Stamp Grant*, File Nos. SAT-A/O-20120817-00137, SAT-AMD-20120824-00142, SAT-AMD-2012-0913-00148 (granted Dec. 21, 2012).

²⁰ Columbia Communications Corp., *Memorandum Opinion and Order*, 7 FCC Rcd 122, 123, ¶ 16 (1991). See also SES Americom, Inc., *Memorandum Opinion and Order*, 20 FCC Rcd 436, 439-40, ¶8 (Int'l Bur., Sat. Div. 2005); PanAmSat Licensee Corp., *Order and Authorization*, 19 FCC Rcd 2012, 2014, ¶11 (Int'l Bur., Sat. Div. 2004).

²¹ ESOC STA Request, Narrative at 4-5.

²² ESOC STA Request, Narrative at Exhibit 2.

links in the 17.3-17.8 GHz band.²³ Spectrum Five asserts that ESOC's STA application violates the freeze because EchoStar plans to operate feeder links and conduct TT&C operations within the United States, and to provide services to U.S.-flagged vessels.²⁴ ESOC disagrees, and states that it will accept a condition on its STA prohibiting it from providing service to U.S.-flagged vessels.²⁵

12. We conclude that ESOC's STA application does not violate the freeze on DBS applications. ESOC explains that it will not provide DBS service in the United States from the 96.2° W.L. orbit location.²⁶ ESOC will operate feeder links and TT&C earth stations within the United States, but we do not interpret these very limited technical operations, under STA, as constituting "DBS service" to the United States for purposes of the DBS freeze. With respect to service to U.S.-flagged vessels, the DBS Freeze Order did not define the "United States" for purposes of the freeze, but we believe it is reasonable to apply the definition of the United States contained in Section 3(51) of the Communication Act of 1934, as amended, namely the "several States and Territories, the District of Columbia, and the possessions of the United States" We see no reason in connection with this STA grant to limit service to U.S.-flagged vessels operating beyond the baselines of the various coastal states and possessions.

13. *Spectrum Five's U.S.-Licensed 17/24 BSS Satellite at 95.15° W.L.* Spectrum Five also bases its opposition on the prejudice a grant of ESOC's request would have with respect to its U.S. license for a 17/24 GHz BSS satellite at 95.15 ° W.L., and the associated ITU filing.²⁷ The particular interference mechanism involved would be one in which transmissions from Spectrum Five's satellite in the 17.3-17.8 GHz band would enter the receiving antenna on a satellite operating under the BERMUDASAT-1 filing, and thereby interfere with that satellite's reception of signals transmitted from a feeder link earth station. Spectrum Five is concerned that, once the BERMUDASAT-1 filing is brought into use, SES Bermuda could claim that Spectrum Five must protect its higher priority filing from such interference. In a letter dated March 28, 2013, EchoStar and SES provided the following commitment concerning Spectrum Five's planned satellite and the USABSN-24 ITU filing associated with it:

[T]o address any potential interference issues with Spectrum Five, EchoStar agrees to accept, as a condition of its STA, the pfd levels produced by the FCC-authorized transmissions of the Spectrum Five satellite at 95.15° WL in the 17.3-17.8 GHz band into the EchoStar 6 satellite's feeder links at 96.2 ° W.L.[footnote omitted] If the ITU coordination request for USABSN-24 uses similar technical parameters and results in the same pfd level, then SES also agrees to accept the pfd levels and that no further coordination with BERMUDASAT-1 would be necessary for any satellite operating within those parameters.²⁸

ESOC's and SES Bermuda's commitments resolve any question concerning prejudice to Spectrum Five's U.S. licensed satellite from operations of EchoStar 6. Accordingly, we find that this concern does not warrant denial of or delay in granting the STA request.

²³ Direct Broadcast Satellite (DBS) 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 (2005).

²⁴ Spectrum Five Opposition at 4.

²⁵ ESOC March 13 *ex parte* statement at 3 n.11.

²⁶ *Id.*

²⁷ Spectrum Five Opposition at 1-2. Spectrum Five March 20 *ex parte* at 2.

²⁸ ESOC March 28 *ex parte* statement at 2.

14. *Spectrum Five's Netherlands BSS Filing at 95.0 ° W.L.* Spectrum Five bases its opposition, in part, on the prejudice it argues a grant of ESOC's request would have with respect to ITU filings for a BSS satellite to operate at the 95° W.L. orbital location, made on its behalf by the Netherlands Administration.²⁹ The Netherlands Administration shares a number of the concerns expressed by Spectrum Five, indicating that "[t]he proposed operations could adversely affect the interests of the Netherlands and therefore the Netherlands Administration is [of] the opinion that the STA should not be approved."³⁰

15. Spectrum Five and the Netherlands Administration both observe that there are "material" differences in technical parameters between the operations proposed in the ESOC STA and the BERMUDASAT-1 filings.³¹ Spectrum Five argues that these technical differences dictate that the proposed operations should only occur pursuant to a new filing for modification of the ITU Radio Regulations Appendix 30/30A BSS Plan (BSS Plan).³² The United States has not filed and will not file a request for modification of the BSS Plan in connection with the operations, as authorized by this STA grant, of EchoStar 6 at 96.2 ° W.L. Accordingly, Spectrum Five's and the Netherlands' concerns regarding the differences in technical parameters between the operations proposed in the ESOC STA and the BERMUDASAT-1 filings are ones that, in our view, can only be resolved by the U.K. and Netherlands Administrations, with the assistance of the ITU if necessary, bearing in mind the obligations each Administration has under the ITU Constitution, Convention, and Radio Regulations. We therefore express no view and will take no position regarding the validity or priority of the ITU filings of either Administration, or of the conformity with the ITU Radio Regulations and associated rules of procedure of any notification by the U.K. Administration to the ITU concerning such filings, except to the extent of assuming the validity of those filings in connection with the operator-to-operator arrangement reached by DIRECTV and SES Bermuda. Consistent with this approach, and with respect to Paragraph 3.2 of the Minutes of the 13th Plenary Meeting of WRC-12 (as set out in ITU Circular Letter CR/333), the FCC will not object to the U.K. Administration bringing into use the BERMUDASAT-1 network, subject to ratification by both the U.S. and U.K. Administrations of the DIRECTV/SES Bermuda operator-to-operator arrangement. We therefore do not share the Netherlands Administration view that the FCC's "[g]rant of an STA would permit EchoStar to perfect the BERMUDASAT-1 filing,"³³ as any determination concerning "perfecting" is for the ITU and not the Commission, and would be with respect to SES Bermuda, the U.K. operator.

16. The Netherlands Administration expresses the view that the ITU Radio Regulations prohibit the grant of an STA to ESOC, because those regulations require the agreement, prior to operating in the frequency bands to which the BSS Plan applies, of Administrations such as the Netherlands that would be affected by operations.³⁴ It is our view that agreement between the United States and the Netherlands for the proposed operation of EchoStar 6 under FCC authority is not required by the Radio Regulations, since the operations as authorized by the FCC will not be pursuant to a filing under the BSS Plan. We note that the Netherlands Administration's views appear to focus on a situation in which that is not the case. Instead, we view the operations authorized by this STA as fixed and mobile satellite services, operating in bands for which there is no corresponding allocation in the ITU Table of Frequency

²⁹ Spectrum Five Opposition at 1; Spectrum Five March 20 *ex parte* at 1-2.

³⁰ Netherlands Views at 1.

³¹ Netherlands Views at 2; Spectrum Five Opposition at 3.

³² Spectrum Five Opposition at 3.

³³ Netherlands Views at 1.

³⁴ *Id.* See also Spectrum Five Opposition at 3.

Allocations.³⁵

17. The Netherlands Administration also expresses the view that operations of EchoStar 6 are not permitted under Article 4.4 of the Radio Regulations.³⁶ We view the operations as authorized by this grant as permitted under Article 4.4. The evidence in this proceeding indicates that the proposed EchoStar 6 operations will not cause harmful interference to any operating radio station, and we will not claim protection from any harmful interference caused to EchoStar 6's operations. There is also no evidence to suggest an imminent commencement of operations by any satellite that would receive harmful interference from EchoStar 6's operations.³⁷ Furthermore, we do not consider our views as inconsistent with those expressed by a distinguished ITU Radiocommunication Bureau official in a document provided by the Netherlands Administration. That official's views included a statement that "[r]egarding the national authorization to operate a satellite network under No. 4.4, this is the prerogative of the administration and beyond the scope of the responsibility of the Bureau."³⁸

18. **Clarifications.** It appears that some of the concerns raised by Spectrum Five and the Netherlands Administration may be the result of imprecise statements or misunderstandings on the part of ESOC and SES Bermuda concerning the regulatory arrangements under which EchoStar 6 would be permitted to operate. For example, Spectrum Five repeatedly notes ESOC's statement that operations will be "pursuant to" the BERMUDASAT-1 filing.³⁹ These statements are not binding upon the FCC and there are several respects in which we believe they are not correct. For purposes of clarification, we provide the following statements. First, operations of the EchoStar 6 satellite as authorized by this STA are solely pursuant to the Communications Act of 1934, as amended, and the FCC's implementing regulations. Second, for purposes of Article 18.1 of the ITU Radio Regulations, the FCC is the licensing administration for the EchoStar 6 space station, and the United States is the country to which that space station is subject. Third, ESOC, as the licensee of the EchoStar 6 satellite and grantee of this STA, is obligated to maintain operational control of EchoStar 6 at all times, and to ensure that operations are under its ultimate direction and control. Any contractual arrangements with customers, for example customers leasing satellite capacity, must ensure that this continues to be the case. Fourth, in the extremely unlikely event of any harmful interference resulting from EchoStar 6's operations, ESOC must cease operations pursuant to the terms of this STA, and it is our view that it will be a matter for the U.K. Administration to take steps as it may deem appropriate, such as informing SES Bermuda that any further operations of the satellite will not be considered as occurring under the BERMUDASAT-1 filing, and cancelling that ITU filing.

³⁵ To the extent the Netherlands Administration's view is that the ITU Radio Regulations and associated rules of procedure require filings or recordation in connection with temporary operations of this nature, we do not share this view.

³⁶ Netherlands Views at 2. Article 4.4 provides:

Administrations of the Member States shall not assign to a station any frequency in derogation of either the Table of Frequency Allocations in this Chapter or the other provisions of these Regulations, except on the express condition that such a station, when using such a frequency assignment, shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the Constitution, the Convention and these Regulations.

³⁷ The ITU Radiocommunication Bureau's Rules of Procedure Concerning Article 4.4, at 1.2, specifically identify their subject as harmful interference which is "actually caused" to an assignment that is "in use."

³⁸ Netherlands Views at second attachment, paragraph 1.

³⁹ See, e.g., Spectrum Five March 29 *ex parte* statement.

IV. CONCLUSION AND ORDERING CLAUSES

19. Based on the foregoing, we conclude that a grant of this application would serve the public interest.

20. Accordingly, IT IS ORDERED that ESOC's application for special temporary authorization, File No. SAT-STA-20130220-00023, IS GRANTED, and ESOC is authorized, for a period of 60 days, commencing on April 1, 2013, to conduct Telemetry, Tracking, and Command operations with the EchoStar 6 satellite (Call Sign S2232) necessary to drift the EchoStar 6 satellite from its current orbital location of 76.8° W.L. to the 96.2° W.L. orbital location and to maintain EchoStar 6 at that location using the following center frequencies: 17.305 GHz (Earth to space), and 12.203 GHz and 12.204 GHz (space to Earth). ESOC is also granted special temporary authority to operate EchoStar 6 in the 12.2-12.7 (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands at the 96.2° W.L. orbital location. Operations under this authorization must be in accordance with the technical specifications set forth in EchoStar's application and the following conditions:

- a. All operations under this authorization are on an unprotected and non-harmful interference basis, *i.e.*, the EchoStar 6 space station shall not cause harmful interference to, and shall not claim protection from interference caused to it by, any other lawfully operating station. In the event of any harmful interference, ESOC shall cease operations immediately upon notification of such interference, and shall inform the Commission, in writing, immediately of such an event.
- b. While at the 96.2° W.L. orbital location, ESOC must maintain the EchoStar 6 spacecraft with an east/west longitudinal station-keeping tolerance of +/- 0.05 degrees.
- c. Any action taken or expense incurred as a result of operations pursuant to this special temporary authority is solely at ESOC's own risk.

21. This Order and Authorization is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. §0.261, and is effective on release.

FEDERAL COMMUNICATIONS COMMISSION



Mindel De La Torre
Chief, International Bureau