



March 31, 2014

**BY EFILE**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: File Nos. SAT-STA-20140113-00004 & SAT-STA-20130220-00023  
(Call Sign S2232)

Dear Ms. Dortch:

EchoStar Satellite Operating Corporation (“EchoStar”) hereby responds to Spectrum Five LLC’s (“Spectrum Five”) recent filings<sup>1</sup> regarding the above-referenced application (“Application”) for renewal of special temporary authorization (“STA”) (as well as the initial STA application, which has been granted) to operate the EchoStar 6 satellite at 96.2° W.L.<sup>2</sup>

Spectrum Five continues to make baseless claims designed solely to block the development of new services to underserved markets in the mid-Atlantic Ocean region by EchoStar and its development partner, Satellites Ventures (Bermuda) Ltd. (“SVBL,” formerly, SES Satellites (Bermuda) Ltd.). Despite Spectrum Five’s efforts, EchoStar and SVBL have continued to take substantial and concrete actions to develop the orbital and spectral resources at 96.2° W.L.<sup>3</sup> Spectrum Five does not dispute that substantial progress has been made since the initial STA grant, but instead raises false and misleading allegations regarding the status of Bermuda authority in connection with EchoStar 6. It offers no basis for further Commission delay in granting the pending Applications. Its latest filings are simply another attempt to seek reconsideration of the

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<sup>1</sup> See Reply of Spectrum Five, IBFS File No. SAT-STA-20140113-00004 (Mar. 11, 2014) (“Spectrum Five Reply”); Letter from Stephen D. Baruch, Spectrum Five, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-STA-20130220-00023 (Mar. 7, 2014) (“Spectrum Five March 7 Letter”).

<sup>2</sup> See *EchoStar Satellite Operating Company*, Order and Authorization, 28 FCC Rcd 4229 (IB 2013) (“*EchoStar STA Order*”), *aff’d*, 28 FCC Rcd 10412 (2013) (“*EchoStar MO&O*”), *appeal pending sub nom. Spectrum Five LLC v. FCC*, Nos. 13-1231 & 1232 (D.C. Cir. Aug. 2, 2013).

<sup>3</sup> See EchoStar Response to “Opposition,” IBFS File No. SAT-STA-20140113-00004, at 3 (Feb. 26, 2014) (“EchoStar Response”).

initial STA grant and should be immediately denied. Further, Spectrum Five's request for Commission intervention at the International Telecommunication Union ("ITU") is beyond the scope of this proceeding.

***All Necessary Regulatory Authorizations Were Secured***

SVBL is duly authorized by the Government of Bermuda to develop Ku-band spectrum and operate satellites at the 96.2° W.L. orbital position.<sup>4</sup> Spectrum Five's speculative allegations to the contrary in the March 7 Letter are simply wrong. The chronology of events related to the authorization of this project by the Government of Bermuda is as follows:

1. November 2010: SVBL applied to the Government of Bermuda for authority under the Satellite Network Notification and Coordination Regulations 2007 (the "Regulations") to operate satellites in the Ku-band at the 96.2° W.L. orbital position. Since then, SVBL worked with the Government of Bermuda to ensure that the requirements of the Regulations are fully satisfied and that a development plan acceptable to the Government of Bermuda is in place.
2. February 20, 2013: The Government of Bermuda issued a letter confirming that it had authorized SVBL to operate satellites in the Ku-band at 96.2° W.L. The first two certificates envisaged under the Regulations, the Certificate of Compliance and the Certificate of Competence to Engage in Coordination, were formally signed by the Bermuda Minister of Economic Development on February 28, 2013, and by the Bermuda Regulatory Authority on March 1, 2013.
3. August 13, 2013: The Government of Bermuda issued to SVBL the third and final certificate, the Certificate of Coordination, which was formally signed by the Bermuda Minister of Economic Development and the Bermuda Regulatory Authority on August 30, 2013.
4. August 14, 2013: The Government of Bermuda issued the final license, effective as of April 13, to SVBL to operate the BERMUDASAT-1 network for the provision of service to Bermuda. The license was formally signed by the Bermuda Minister of Economic Development and the Bermuda Regulatory Authority on August 30, 2013.

Each of these listed events is stated in the record. Spectrum Five simply misstates the facts. EchoStar's development partner, SVBL, held all necessary and appropriate

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<sup>4</sup> Letter from Jeane Nikolai, Acting Director of Telecommunications, Bermuda Department of Telecommunications, to Fern Jarmulnek, Acting Chief, Satellite Division, International Bureau, FCC (Feb. 20, 2013) (attached to EchoStar STA Application, IBFS File No. SAT-STA-20130220-00023 (Feb. 20, 2013)).

authority from the Government of Bermuda at the time of the filing of the initial STA request and during the initial 60-day STA period, and has held such authority continuously since that time.

Additionally, Spectrum Five is wrong that SVBL is required under Article 18.1 of the ITU Radio Regulations to obtain a license from the United Kingdom.<sup>5</sup> The Commission/United States is the licensing administration of EchoStar 6 for purposes of Article 18.1.<sup>6</sup> This is merely another improper attempt by Spectrum Five to seek reconsideration of the Commission's STA findings long after the time has passed for doing so.

### **The Substantial Commercial Development Activities of EchoStar and SVBL Support FCC Grant of the Applications**

Since the initial STA grant, EchoStar and SVBL have engaged in substantial commercial development activities, including activating the communications payload on EchoStar 6 and holding ongoing negotiations with potential commercial partners for the provision of new services to the maritime market and other underserved markets in the mid-Atlantic Ocean region.<sup>7</sup> Although Spectrum Five claims that operation of EchoStar 6's communications payload is "the key consideration" in the Commission's STA determination,<sup>8</sup> it offers no citation to the *EchoStar STA Order* or other FCC precedent to support this novel proposition. Spectrum Five cannot do so because, as it previously acknowledged, there is no immediate requirement for service under the *EchoStar STA Order*.<sup>9</sup> Thus, activation of the communications payload is not required under the initial STA grant. Nonetheless, the attached declaration fully supports EchoStar's statement that EchoStar 6's communications payload has been activated,<sup>10</sup> and refutes Spectrum Five's unattested claim that an independent third party observed no communications activity on any of EchoStar 6's transponders in February 2014.

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<sup>5</sup> See Spectrum Five Reply at 4.

<sup>6</sup> See *EchoStar MO&O* ¶ 8.

<sup>7</sup> See EchoStar Response at 2.

<sup>8</sup> See Spectrum Five Reply at 4-5.

<sup>9</sup> See *EchoStar MO&O* ¶ 15 (citing Spectrum Five Application for Review, IBFS File No. SAT-STA-20130220-00023, at 10-11 (Apr. 5, 2013); Letter from Todd M. Stansbury, Counsel for Spectrum Five, to Marlene H. Dortch, Secretary, IBFS File No. SAT-STA-20130220-00023, at 2-5 (June 4, 2013)).

<sup>10</sup> See Declaration of Darren Hamilton (attached hereto).

### **Spectrum Five's NORAD Data Shows Full or Substantial Compliance with ITU and FCC Station-keeping Requirements**

As EchoStar has stated, the available tracking data shows full compliance with the ITU station-keeping provisions and substantial compliance with the FCC station-keeping requirement.<sup>11</sup> Even the NORAD data that Spectrum Five submitted shows both full ITU compliance and substantial FCC compliance.<sup>12</sup> As an initial matter, despite Spectrum Five's claims to the contrary,<sup>13</sup> there is no ITU requirement that EchoStar 6 be station-kept to within 0.05° of 96.2° W.L. As the ITU Radiocommunication Bureau ("BR") has noted, the specification of 0.05° in the Appendix 4 information for the BERMUDASAT-1 notification is solely a "planned longitudinal tolerance" and cannot be interpreted as an ITU requirement.<sup>14</sup>

Despite the evidence in the record (including NORAD data submitted by Spectrum Five), Spectrum Five continues to pursue claims challenging the bringing-into-use ("BIU") status of BERMUDASAT-1, based partly on the alleged noncompliance with the ITU station-keeping requirement.<sup>15</sup> The ITU BR has twice rejected these claims. Specifically, on February 18, 2014, the BR found that: (i) the satellite has been maintained within a 0.1° station-keeping box *in accordance with ITU rules*; (ii) the satellite has the capability to maintain its position within a 0.05° station-keeping box consistent with the planned longitudinal tolerance specified in the BERMUDASAT-1 notification; and (iii) importantly, no unacceptable interference was caused by the satellite in any event.<sup>16</sup> Most recently, EchoStar understands that, on March 12, 2014, the BR reaffirmed its findings and rejected Spectrum Five's station-keeping and other BIU-related claims.

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<sup>11</sup> See Letter from Jennifer A. Manner, EchoStar, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-STA-20130510-00067 *et al.*, at 2 (Jan. 3, 2014).

<sup>12</sup> See Letter from Todd Stansbury, Counsel for Spectrum Five, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-STA-20130510-00067 *et al.*, Attachment (EchoStar 6: Longitude vs. Epoch) (July 8, 2013).

<sup>13</sup> See Spectrum Five March 7 Letter, Attachment at 5.

<sup>14</sup> See Letter from Yvon Henri, Chief, Space Services Dept., BR, ITU, at 1 (Feb. 18, 2014) ("BR Letter") (attached to Letter from Jennifer A. Manner, EchoStar, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-MOD-20130227-00026 *et al.* (Mar. 6, 2014)); *see also* ITU Radio Regulations, App. 4, Annex 2, Nos. A(4)(a)(2)(a)-(b).

<sup>15</sup> See Spectrum Five March 7 Letter, Attachment at 1-2.

<sup>16</sup> The BR further rejected other BIU-related claims regarding EchoStar 6's coverage capability in accordance with the notified characteristics of BERMUDASAT-1 network. *See* BR Letter at 1-2.

### **EchoStar's Inclined Orbit Operation Is Well-suited for Innovative Mobile Services**

Spectrum Five does not dispute that EchoStar's inclined orbit operation is well-suited for the innovative mobile services that EchoStar and SVBL seek to develop.<sup>17</sup> These services may require tracking earth station antennas, as EchoStar has noted.<sup>18</sup> Thus, there is no genuine dispute on this issue, and the claim that EchoStar's inclined orbit operation precludes these services should be rejected.

### **The FCC Should Reject Spectrum Five's Request for FCC Intervention at the ITU**

Spectrum Five's request for Commission intervention at the ITU seeks to reverse the consequences of the initial STA grant and to remove the "serious obstacle" that it claims the Commission created by granting the initial STA.<sup>19</sup> Specifically, Spectrum Five asks that the Commission unlawfully repudiate its obligation under the existing U.S.-U.K. coordination agreement to refrain from opposing BERMUDASAT-1's BIU status.<sup>20</sup> Spectrum Five's request does not address the merits of the Application for STA renewal, but rather improperly seeks reconsideration of the Commission's decisions granting and upholding the initial STA. Thus, its request for Commission reconsideration and repudiation of an international coordination agreement should be rejected as beyond the scope of this STA renewal proceeding.

Accordingly, EchoStar urges the Commission to immediately grant the Application (and other related renewal STA applications) and dismiss Spectrum Five's baseless claims.

Sincerely,

/s/ Jennifer A. Manner  
Jennifer A. Manner  
Vice President of Regulatory Affairs

cc: Diane Cornell (FCC)  
David Wilson (Spectrum Five)

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<sup>17</sup> See Spectrum Five Reply at 11; *see also* EchoStar Application, Exh. 1 at 3.

<sup>18</sup> See EchoStar Response at 5.

<sup>19</sup> See Spectrum Five March 7 Letter, Attachment at 8-9.


<sup>20</sup> See *id.* at 8.

## DECLARATION

I, Darren Hamilton, declare under penalty of perjury that the following facts are true and correct to the best of my knowledge, information, and belief:

1. I am employed as Director Space Systems Engineering of EchoStar Satellite Operating Corporation (“EchoStar”).
2. I have personal knowledge of the operation of the EchoStar 6 satellite at 96.2° W.L.
3. EchoStar 6’s communications payload was activated in November 2013, and EchoStar on December 3, 2013, commenced standard carrier transmissions between EchoStar 6 and an authorized feederlink earth station in Mt. Jackson, Virginia (Call Sign E070273), for testing and evaluation purposes, including defining the optimum satellite performance for mobile video services. The EchoStar 6 transmissions have continued uninterrupted to the present day.

Executed on March 28, 2014:

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Darren Hamilton  
Director Space Systems Engineering  
EchoStar Satellite Operating Corporation

**CERTIFICATE OF SERVICE**

I, Theresa Rollins, hereby certify under penalty of perjury that the foregoing Letter was served this 31<sup>st</sup> day of March, 2014, by depositing a true copy thereof with the United States Postal Service, first class postage pre-paid, addressed to:

David Wilson  
Chief Executive Officer  
Spectrum Five LLC  
807 Las Cimas Parkway  
Suite 270  
Austin, TX 78746

/s/ Theresa Rollins  
Theresa Rollins