

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

In the Matter of

ECHOSTAR SATELLITE OPERATING
CORPORATION

Request for Renewal of Special Temporary
Authorization to Move EchoStar 6 to, and Operate
It at, 96.2° W.L.

File No. SAT-STA-20140513-00050
Call Sign S2232

To: Chief, International Bureau

OPPOSITION OF SPECTRUM FIVE LLC¹

On February 20, 2013, EchoStar Satellite Operating Company first sought special temporary authority pursuant to 47 C.F.R. § 25.120(b) to move its EchoStar 6 satellite to 96.2° W.L. and to operate at that orbital location. EchoStar asserted that it needed to move EchoStar 6 immediately “to accommodate the needs of its customer and development partner, SES Satellites (Bermuda) Ltd.,” which purportedly intended “to use EchoStar 6 at 96.2° W.L. to evaluate and develop commercial service opportunities in the Caribbean, Latin American, and North Atlantic markets outside of the United States.”² The Bureau granted EchoStar’s STA request for a 60-day

¹ Because the Bureau has not publicly noticed this STA request, Spectrum Five’s opposition is an informal objection pursuant to 47 C.F.R. § 25.154(b). For the convenience of the Bureau, Spectrum Five notes that this informal objection raises materially similar issues as Spectrum Five raised in its April 14, 2014 objection to a prior, and materially identical, STA request. *See* Opposition, *EchoStar STA Renewal*, IBFS File No. SAT-STA-20140314-00031 (Apr. 14, 2014).

² Narrative at 2, Application for Special Temporary Authority, *EchoStar Satellite Operating Corporation; Request for Special Temporary Authority to Move EchoStar 6 to, and Operate It at, 96.2° W.L.*, IBFS File No. SAT-STA-20130220-00023 (Feb. 20, 2013) (“Initial STA Application”).

period beginning on April 1, 2013.³

On February 27, 2013, EchoStar also filed a request for a permanent license modification to operate EchoStar 6 at 96.2° W.L., which it has amended twice.⁴ The Commission has accepted that filing and placed it on public notice, but neither the Bureau nor the Commission has acted on it.⁵ In the meantime, EchoStar has submitted six additional requests to renew the initial STA for 60-day periods; the Bureau also has not acted on these requests.⁶ Now before the Bureau is EchoStar's latest request to renew the STA for another 60-day period — until July 26, 2014.⁷

The Commission should deny EchoStar's request for several independent reasons. *First,*

³ Order and Authorization, *EchoStar Satellite Operating Company; Application for Special Temporary Authority Related to Moving the EchoStar 6 Satellite from 77° W.L. Orbital Location to the 96.2° W.L. Orbital Location, and to Operate at the 96.2° W.L. Orbital Location*, 28 FCC Rcd 4229 (Int'l Bur. 2013) (“*Bureau Order*”). The Commission affirmed that decision. See Memorandum Opinion and Order, *EchoStar Satellite Operating Company; Application for Special Temporary Authority Related to Moving the EchoStar 6 Satellite from the 77° W.L. Orbital Location to the 96.2° W.L. Orbital Location, and to Operate at the 96.2° W.L. Orbital Location*, 28 FCC Rcd 10412 (2013) (“*Order*”). The Commission's decision is under review before the D.C. Circuit. See *Spectrum Five LLC v. FCC*, Nos. 13-1231, 13-1232 (D.C. Cir. argued Mar. 11, 2014).

⁴ See IBFS File No. SAT-MOD-20130227-00026 (Feb. 27, 2013); see also IBFS File No. SAT-AMD-20130429-00063 (Apr. 29, 2013) (amendments); IBFS File No. SAT-AMD-20130613-00083 (June 13, 2013) (amendments).

⁵ Public Notice, *Policy Branch Information Satellite Space Applications Accepted for Filing*, Report No. SAT-00946 (FCC May 3, 2013), available at http://licensing.fcc.gov/ibfswb/ib.page.FetchPN?report_key=995131.

⁶ See IBFS File No. SAT-STA-20130510-00067 (May 10, 2013) (requested extension to July 30, 2013); IBFS File No. SAT-STA-20130716-00093 (July 16, 2013) (requested extension to September 29, 2013); IBFS File No. SAT-STA-20130912-00115 (Sept. 12, 2013) (requested extension to November 28, 2013); IBFS File No. SAT-STA-20131113-00131 (Nov. 13, 2013) (requested extension to January 27, 2014); IBFS File No. SAT-STA-20140113-00004 (Jan. 13, 2014) (requested extension to March 28, 2014); IBFS File No. SAT-STA-20140314-00031 (Mar. 14, 2014) (requested extension to May 27, 2014).

⁷ See Application for Special Temporary Authority, *EchoStar 6 STA Renewal*, IBFS File No. SAT-STA-20140513-00050 (May 13, 2014) (“*Current STA Application*”).

EchoStar's application fails the test for an STA. It has become clear that EchoStar's goal is to warehouse valuable spectrum at 96.2° W.L. rather than to provide useful service from that orbital location, and thus, there will be no prejudice — let alone “serious[] prejudice [to] the public interest,” 47 C.F.R. § 25.120(b) — resulting from the denial of the STA. Despite being in orbit around 96.2° W.L. for over a year, EchoStar 6 has never provided service to a single customer and identifies no imminent plans to do so. EchoStar 6 is also operating in a highly inclined orbit (approximately 2°), and thus, cannot even fulfill a major use — as EchoStar continues to claim in its latest application — of providing direct-to-home services to consumers who do not have tracking antenna.

Second, EchoStar has made consistent misstatements to the Commission about EchoStar 6 throughout its filings for the various STAs. These include EchoStar's statements about the location of EchoStar 6 — which continues to drift outside the 0.05° station-keeping box according to NORAD data — and the alleged operation of EchoStar 6 that supposedly commenced in December 2013, when recent monitoring measurements show that EchoStar has activated only 1 of the 32 transponders on the satellite. Recent revelations also call into question the authority EchoStar's partner — then known as SES (Satellites) Bermuda, Ltd. — had from the Bermuda government at the time EchoStar sought the initial STA. The Commission should deny the STA as a sanction for EchoStar's pattern of intentionally misleading and knowingly false statements. At a minimum, the Commission must insist on much more fulsome disclosures from EchoStar before it acts on any of EchoStar's pending applications regarding EchoStar 6.

Third, as with the initial STA grant, granting a further STA will violate the Commission's DBS freeze.

I. EchoStar Does Not Make the Required Showing of “Extraordinary Circumstances” or “Serious Prejudice”

The Commission’s rules make clear that an STA is to be a rare departure from the procedures that ordinarily apply to satellite licensing. These rules authorize the grant of an STA only if there are “*extraordinary circumstances* requiring temporary operations in the public interest” and if “delay in the institution of these temporary operations would *seriously prejudice* the public interest.” 47 C.F.R. § 25.120(b)(1) (emphases added); *accord* 47 U.S.C. § 309(f). As the Commission has explained, “[t]here is nothing in the Communications Act that suggests that Congress contemplated allowing STA requests to be routinely granted.”⁸

A. EchoStar’s application does not even attempt to satisfy this stringent standard. Nowhere does EchoStar claim there are “extraordinary circumstances requiring temporary operations” or that there would be “serious[] prejudice [to] the public interest” if the STA were denied. EchoStar’s sole claim is that extending the STA will “serve the public interest” by allowing EchoStar to “develop[] new markets.”⁹ Mere advancement of the “public interest” is not the standard for granting an STA; it is the standard for granting an ordinary application for a new license or to modify an existing license. *See* 47 U.S.C. § 309(a). Moreover, the Commission’s rules plainly state that ordinary business needs like “marketing considerations,” “meeting scheduled customer in-service dates,” or, here, developing new markets do not justify an STA. 47 C.F.R. § 25.120(b)(1).¹⁰ If anything, the “urgency” associated with developing new

⁸ First Report and Order and Further Notice of Proposed Rulemaking, *Amendment of the Commission’s Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶ 273 (2003) (“*Space Station Reform Order*”).

⁹ Current STA Application Narrative at 3.

¹⁰ Tellingly, in reviewing the initial STA grant, the Commission barely relied on the supposed service that EchoStar 6 would provide. *See Order* ¶ 16 (stating that the new service EchoStar 6 would provide merely “adds some weight to the case for the STA”).

markets is well below the level of urgency already found unavailing in the regulation, such as providing service to *existing* customers by the scheduled service date.

B. In any case, EchoStar fails to provide any evidence that temporary operations are necessary to avoid serious prejudice to the public interest. It is undisputed that EchoStar 6 has *never provided any service* from 96.2° W.L.¹¹ In fact, EchoStar recently admitted that it did not even “activate[.]” EchoStar 6’s communications payload for *testing* until November 2013 — over six months after receiving the initial STA.¹² Furthermore, although EchoStar claims that EchoStar 6’s “communications payload was activated” in November 2013, and commenced “uninterrupted” operations on December 3, 2013,¹³ Spectrum Five has discovered through third-party monitoring that only 1 of the 32 transponders on EchoStar 6 is actually turned on today.¹⁴ Thus, EchoStar continues to offer misleading claims about the operation of EchoStar 6: now claiming that turning on three percent of the satellite capacity for testing purposes constitutes “activating the communications payload,” just as it previously claimed that the satellite was “in operation” in April 2013, when none of the 32 transponders had been activated or would be for many months.¹⁵

¹¹ Letter from Jennifer A. Manner, EchoStar, to Marlene H. Dortch, Secretary, FCC, at 3, IBFS File Nos. SAT-STA-20140113-00004 *et al.* (Mar. 31, 2014) (“EchoStar 3/31/14 Letter”) (confirming that EchoStar 6 has never provided service from 96.2° W.L., and that there are no concrete plans for it to do so).

¹² *Id.* Decl. ¶ 3.

¹³ *Id.*

¹⁴ Spectrum Five obtained this information pursuant to its contract with SAT Corporation, which recorded the information at its Woodbine, Maryland monitoring station. The results of that monitoring — and the explanation of what the monitoring reveals — are set forth in the attached Declaration of Thomas E. Sharon. *See* Sharon Decl. ¶ 4 & Exh. C.

¹⁵ *E.g.*, Current STA Application Narrative at 2; Opposition of EchoStar Satellite Operating Company to Application for Review at 5, *EchoStar Satellite Operating Company; Application for Special Temporary Authority Related to Moving the EchoStar 6 Satellite from the 77° W.L. Orbital Location to the 96.2° Orbital Location, and to Operate at the 96.2° W.L.*

Nor does EchoStar's use of a single transponder today — more than six months after it claims it finally turned on any portion of the communications payload — show that EchoStar has imminent plans to provide service that would be disrupted by denial of the STA. EchoStar merely states that it has “commenced commercial development activities,” that an STA extension “will allow EchoStar and SES to continue developing new markets,” that “[s]ignificant opportunity exists for EchoStar 6 to offer new multi-channel video services to U.S. and non-U.S. ships and vessels,” and that “EchoStar 6 services also may include direct-to-home services.”¹⁶ This is the same corporate jargon that EchoStar has been repeating for nearly a year without any showing that EchoStar 6 will actually provide service.¹⁷

Indeed, EchoStar continues to repeat the same claims about “direct-to-home services” that EchoStar has been making since February 2013, despite its recent admissions that EchoStar 6 is not capable of providing those services. Because EchoStar 6 is in a highly-inclined orbit, only antenna with tracking capabilities can receive transmissions; mass-market direct-to-home consumers do not have such antenna. EchoStar does not deny these facts.¹⁸

It is thus apparent that EchoStar's goal is to warehouse valuable spectrum rather than provide useful service to the public. This is contrary to the Commission's anti-warehousing

Orbital Location, IBFS File No. SAT-STA-20130220-00023 (Apr. 22, 2013) (“EchoStar Opp'n”).

¹⁶ Current STA Application Narrative at 3; *see also* Response to “Opposition” at 2-4, IBFS File No. SAT-STA-20140113-00004 (Feb. 26, 2014) (“EchoStar 2/26/14 Response”) (explaining that EchoStar is “pursuing business development opportunities,” has “engaged in discussions with various commercial partners,” and has “held extensive discussions with potential customers/service providers”); EchoStar 3/31/14 Letter at 3 (stating that EchoStar is “holding ongoing negotiations with potential commercial partners”).

¹⁷ *Compare* Application Narrative, IBFS File No. SAT-STA-20130510-00067 (May 10, 2013) (nearly identical application narrative for EchoStar's second STA request).

¹⁸ *See* EchoStar 3/31/14 Letter at 5 (“EchoStar's inclined orbit operation is well-suited for the innovative mobile services that EchoStar and SVBL seek to develop. These services may require tracking earth station antennas, as EchoStar has noted.”) (footnotes omitted).

policy.¹⁹ On this record, the Commission cannot grant EchoStar's latest STA application.

II. EchoStar Is Not Qualified To Receive an STA Renewal Because of Its Violations of the Station-Keeping Requirement and Repeated Misstatements to the Commission

A. EchoStar's Violations of the Station-Keeping Requirement

The Bureau granted EchoStar's initial STA with only two technical conditions, one of which was that, “[w]hile at the 96.2° W.L. orbital location, [EchoStar] must maintain the EchoStar 6 spacecraft with an east-west longitudinal station-keeping tolerance of +/- 0.05 degrees.”²⁰ EchoStar has repeatedly claimed that “EchoStar 6 was successfully repositioned to 96.2° W.L. on April 13.”²¹ Thus, on and after April 13, 2013, EchoStar 6 needed to be maintained within 0.05° of 96.2° W.L.²²

It is undisputed that EchoStar violated one of the two technical conditions that applied to EchoStar 6. Spectrum Five provided the Commission with NORAD measurements showing that

¹⁹ First Order on Reconsideration and Fifth Report and Order, *Amendment of the Commission's Space Station Licensing Rules and Policies*, 19 FCC Rcd 12637, ¶ 25 (2004) (noting the “real costs associated with warehousing and speculation in orbit and spectrum resources, in that it precludes another party willing and able to construct a satellite from doing so”).

²⁰ *Bureau Order* ¶ 20 (emphasis added).

²¹ *E.g.*, Current STA Application Narrative at 2 (emphasis added); EchoStar Opp'n at 5.

²² EchoStar has argued that the *Bureau Order* did not specify the date by which EchoStar 6 must comply with the station-keeping requirement. The *Bureau Order*, however, did specify that “[w]hile at 96.2° W.L.,” EchoStar 6 must be station-kept, and EchoStar has repeatedly represented to the Commission that “[o]n April 13, EchoStar 6 was successfully repositioned to . . . 96.2° W.L.” EchoStar Opp'n at 5. In any case, EchoStar does not even claim that EchoStar 6 was ever continuously station-kept during the initial 60-day STA period. *See* EchoStar 2/26/14 Response at 4 (claiming only “substantial compliance” with the station-keeping requirement during that period). Surely, when the Bureau imposed the station-keeping requirement in granting the initial STA, it intended for EchoStar to begin complying with that requirement *at some point* during those 60 days. Yet, nearly a year later, EchoStar 6 continues to travel outside the 0.05° station-keeping box.

EchoStar 6 operated outside the 0.05° station-keeping box after April 13, 2013.²³ For example, the NORAD data show EchoStar 6 was at 96.2565° W.L. at about 9:30 a.m. on April 15 and at 96.2669° W.L. at about 10:30 a.m. on April 16.²⁴ Two days later, EchoStar challenged the NORAD data, claiming that it “merely consists of . . . two-line elements and provides insufficient data points to support an accurate determination of the satellite’s location.”²⁵ EchoStar assured the Commission that it “utilizes complex data points to track each of [its] satellites’ positions and movements with a high degree of precision and reliability.”²⁶ However, in a July 15, 2013 letter, EchoStar was forced to admit that, according to its own satellite-tracking data, the NORAD data was correct: EchoStar 6 had not been properly station-kept.²⁷

Moreover, EchoStar later admitted in a January 3, 2014 letter that the data it submitted to the Commission in the July 15, 2013 letter was inaccurate and that EchoStar did not actually know exactly where its satellite was located during that time. EchoStar explained that it discovered “an incorrect spacecraft calibration parameter,” resulting in a “0.035 to 0.040° westward bias” in the data it had submitted on July 15. EchoStar supposedly corrected this error “at the end of October” but did not report this error to the Commission until January 3, 2014. In addition, EchoStar again was forced to admit that the corrected data also showed EchoStar 6 had

²³ See Letter from Todd Stansbury, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-STA-20130510-00067 *et al.* (July 8, 2013).

²⁴ *Id.*

²⁵ Letter from Paul Forness, EchoStar, to Marlene H. Dortch, Secretary, FCC, at 2, IBFS File Nos. SAT-STA-20130510-00067 *et al.* (July 10, 2013).

²⁶ *Id.*

²⁷ See Letter from Phuong N. Pham, Wilkinson Barker Knauer LLP, to Marlene H. Dortch, Secretary, FCC, at 3, IBFS File Nos. SAT-STA-20130510-00067 *et al.* (July 15, 2013) (admitting that from April 13 to April 25, EchoStar 6 “remained within a daily east-west 0.05° station-keeping box” for only “a preponderance of the time”).

not been properly station-kept.²⁸ Moreover, EchoStar never explained which “incorrect spacecraft calibration parameter” caused it not to know where EchoStar 6 actually was in the sky, or how an incorrect parameter could result in a variable, rather than a constant, “westward bias” in its results. Indeed, EchoStar has never provided the Commission with a table of data listing numerically the location of EchoStar 6 (according to EchoStar).

Despite its past inability to station-keep EchoStar 6, EchoStar assured the Commission in its January 3, 2014 letter that, “EchoStar 6 has remained within the FCC’s 0.05° station-keeping box *at all times* since the error was fully corrected.”²⁹ However, the declaration from EchoStar’s Chief Technology Officer undermines that claim, asserting only that “EchoStar 6 has . . . remained within the 0.05° station-keeping box required by the STA for substantially greater than the majority of time on a daily basis.”³⁰ And EchoStar’s most recent filing claims only “substantial compliance” with the Commission’s station-keeping requirement.³¹

In fact, NORAD data continue to confirm that EchoStar 6 is not being properly station-kept. For example, NORAD data shows that EchoStar 6 was at 96.270° W.L., 96.264° W.L., and 96.273° W.L. on January 30, 2014, February 11, 2014, and February 14, 2014, respectively.³² Notably, NORAD measurements are only taken once or twice per day, so it is possible (and even likely) that EchoStar 6 was further outside the station-keeping box at other

²⁸ See Letter from Phuong N. Pham, Wilkinson Barker Knauer LLP, to Marlene H. Dortch, Secretary, FCC, at 2, IBFS File Nos. SAT-STA-20130510-00067 *et al.* (Jan. 3, 2014) (stating that, from April 13 to December 20, “EchoStar 6 has . . . remained within the 0.05° station-keeping box required by the STA” only “for substantially greater than the majority of the time”).

²⁹ *Id.* (emphasis added).

³⁰ *Id.* Decl. ¶ 4.

³¹ EchoStar 3/31/14 Letter at 4.

³² See Sharon Decl. ¶ 3 & Exh. A.

times during those days and on other days. Moreover, the NORAD data show that EchoStar 6 has been drifting to the west since September 2013.³³ EchoStar’s refusal to provide the Commission with actual data showing the purported location of EchoStar 6 — and explaining the many discrepancies between EchoStar’s claims and the NORAD data — prevents the Commission from concluding that EchoStar 6 has successfully been station-kept. Indeed, EchoStar has attempted to sweep the recent NORAD data under the rug by asserting falsely that Spectrum Five’s June 14, 2014 opposition, which presented the data for the first time, “merely rehashe[d]” previous arguments.³⁴

In all events, EchoStar’s admitted violations of the station-keeping requirement are reason enough to deny renewal of the STA. As this Commission has previously explained, “[o]perating [a] satellite at a location other than the assigned location is a serious violation of EchoStar’s license conditions, creates an increased potential for interference . . . , and runs afoul of our spectrum management policies.”³⁵

At the very least, the Commission must thoroughly investigate whether EchoStar is capable of station-keeping EchoStar 6.³⁶ The only independent satellite tracking data before the Commission — the NORAD data — continues to show that EchoStar 6 is not being station-kept. It would be improper for the Bureau to rely on EchoStar’s self-serving representations that EchoStar 6 is in compliance with (and will continue to be in compliance with) the station-

³³ *See id.* ¶ 3 & Exh. B.

³⁴ Letter from Jennifer A. Manner, EchoStar, to Marlene H. Dortch, Secretary, FCC, at 1, IBFS File Nos. SAT-STA-20140314-00031 (Apr. 29, 2014) (“EchoStar 4/29/14 Letter”).

³⁵ Notice of Apparent Liability, *EchoStar Satellite Corp.*, 13 FCC Rcd 16510, ¶ 3 (Int’l Bur. 1998); *see* 47 C.F.R. § 1.80(a)(1) (providing forfeiture penalties for “repeatedly fail[ing] to comply substantially with the terms and conditions of any license”).

³⁶ *See Space Station Reform Order* ¶ 10 n.29 (“The Commission dismisses applications when it finds that the applicant is not legally, financially, or technically qualified to hold a satellite license.”).

keeping requirement. EchoStar has proven to be an unreliable source in the past; it has failed to explain why it did not detect the inaccuracy of its data before submitting it to the Commission; it has failed to give a full explanation for the inaccuracy in its data; and it has not provided any assurance that its current claims about the location of EchoStar 6 can be trusted.³⁷

B. EchoStar’s Pattern of Additional False and Misleading Statements to the Commission

EchoStar’s pattern of misleading and false statements and material omissions in these proceedings provides further grounds for both investigating EchoStar and denying its STA application.

1. EchoStar attached to its Initial STA Application a letter from a Bermudian official “confirm[ing] that Bermuda has authorized SES Satellites (Bermuda) Ltd. . . . to operate satellites . . . at the nominal 96.2° W.L. orbital location.”³⁸ EchoStar similarly represented in its application that EchoStar 6 would “operate pursuant to the BERMUDASAT-1 filing” and that the “Bermuda Department of Telecommunications concurr[ed] with this approach.”³⁹ The obvious implication of these statements was that SES had received all of the authorizations required to operate EchoStar 6 once moved to 96.2° W.L. In fact, those representations were, at best, incomplete and misleading, as information that has come to light since the Commission upheld the Bureau’s grant of the Initial STA Application demonstrates.

Bermudian law requires a satellite operator to obtain a “certificate of compliance” and a

³⁷ EchoStar also has a checkered history with the Commission. It has been sanctioned for its “‘disingenuous’ behavior and lack of candor” toward the Commission. *See* Declaratory Ruling and Order, *National Association of Broadcasters and Association of Local Television Stations; Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065, ¶ 37 n.116 (Media Bur. 2002) (citing four instances of fines, forfeiture, and/or admonishment).

³⁸ Initial STA Application Narrative, Exh. 1, at 1.

³⁹ Initial STA Application Narrative at 2.

“certificate competence to engage in coordination” in order to receive a license.⁴⁰ EchoStar has admitted that its development partner, SES, did not receive these certificates until March 2013 or the final license from Bermuda until August 2013 — after EchoStar had filed its Initial STA Application.⁴¹ EchoStar withheld that fact from the Commission while it considered EchoStar’s Initial STA Application.

Furthermore, SES needed a license from the United Kingdom before it could operate EchoStar 6, as EchoStar’s Initial STA Application proposed and the Bermuda letter represented that SES was authorized to do. The United Kingdom’s Outer Space Act of 1986 provides that any “bodies incorporated under the law of any part of the United Kingdom” shall not “operat[e] a space object” or perform “any activity in outer space” without a license from the United Kingdom’s Secretary of State.⁴² This act applied to SES because EchoStar’s Initial STA Application stated that SES — a Bermudian company governed by United Kingdom law — would operate the satellite.⁴³ SES did not have a license from the United Kingdom.⁴⁴

The recent letters from Bermuda (dated April 1, 2014) and EchoStar (dated March 31,

⁴⁰ A third certificate — the “certificate of coordination” — is not a necessary prerequisite to a satellite license. *See Bermuda Satellite Network Notification and Coordination Regulations* (2007) (Regulation Nos. 5, 6, 9, 10, 12, and 18), *available at* <http://www.bermudalaws.bm/Laws/Consolidated%20Laws/Satellite%20Network%20Notification%20and%20Coordination%20Regulations%202007.pdf>.

⁴¹ *See* EchoStar 3/31/14 Letter at 2.

⁴² Outer Space Act, 1986, Eliz. c. 38, §§ 1, 3, *available at* <http://www.bis.gov.uk/assets/ukspaceagency/docs/osa/outer-space-act-1986.pdf>.

⁴³ *See* Initial STA Application Narrative at 2 (stating “SES intends to use EchoStar 6 . . . to evaluate and develop commercial service opportunities”) *id.* Exh. 1, at 1 (stating that SES “intends to operate the FCC-licensed EchoStar [6] satellite”).

⁴⁴ EchoStar now claims that SES did not need a U.K. license because the United States is the licensing administration for ITU purposes. *See* EchoStar 3/31/14 Letter at 3. However, EchoStar does not attempt to explain how that is a proper interpretation of the United Kingdom’s Outer Space Act.

2014) did nothing to cure the prior misleading statements. The Bermuda letter simply “reiterate[s] and confirm[s]” its earlier representation that SES “was authorised . . . to operate” a satellite at 96.2° W.L. as of February 20, 2013, even as it concedes that the necessary “certificates and . . . license” were issued *after* that date and ignores that those necessary authorizations were unmentioned in Bermuda’s February 2013 letter.⁴⁵ EchoStar then offers a chronology of events that confirms that SES did not receive the final license from Bermuda until August 30, 2013.⁴⁶ Although EchoStar claims that “[e]ach of the[] . . . events” that occurred after February 20, 2013 is “stated in the record,”⁴⁷ it was Spectrum Five that brought the information to the Commission’s attention, based on a May 31, 2013 press report — which post-dated the Bureau’s grant of the STA.⁴⁸ EchoStar did not address the misleading statements in its Initial STA Application until long after the Commission acted. Nor has EchoStar provided any explanation for its failure to disclose in the Initial STA Application the fact that SES did not have a license from the United Kingdom.⁴⁹

2. The Bureau is already well aware of EchoStar’s other misleading statements, so we repeat them in brief. *First*, in the Initial STA Application, EchoStar stated it needed to move EchoStar 6 to “accommodate the needs of its customer and development partner, SES,” which according to EchoStar, “intends to use EchoStar 6 at 96.2° W.L. to evaluate and develop

⁴⁵ Letter from William G. Francis, Assistant Cabinet Secretary, Bermuda Ministry of Educ. & Econ. Dev., to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-STA-20140113-00004 & SAT-STA-20130220-00023 (Mar. 31, 2014).

⁴⁶ EchoStar 3/31/14 Letter at 2.

⁴⁷ *Id.*

⁴⁸ Letter from Todd Stansbury, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC, at 4, IBFS File No. SAT-STA-20130220-00023 (June 4, 2013).

⁴⁹ Spectrum Five raised this issue in its April 14, 2014 objection, and EchoStar provided no substantive response. *See* EchoStar 4/29/14 Letter at 1.

commercial service opportunities in . . . markets outside of the United States.”⁵⁰ However, as the Bureau found, EchoStar’s true motivation for seeking an STA — undisclosed in its STA application — was to enable the United Kingdom to claim that it had brought into use the BERMUDASAT-1 filing.⁵¹

Second, EchoStar stated that EchoStar 6, once moved, would operate “pursuant to” the BERMUDASAT-1 filing.⁵² However, the Bureau found that statement to be “not correct,” due to the large discrepancy between the coverage beams described in the BERMUDASAT-1 filing and for the operations proposed by EchoStar’s STA application.⁵³

Third, during the STA application process, EchoStar stated that EchoStar 6 could operate until 2019 even though it had previously represented to the Commission that February 2013 was EchoStar 6’s end of useful life.⁵⁴ EchoStar did not explain this discrepancy until more than six months after the STA application, when it disclosed to the Commission that it had conserved fuel by suspending north-south station-keeping in the summer of 2012.⁵⁵ The Commission’s rules required EchoStar to disclose the suspension of north-south station-keeping when it occurred, not over a year later.⁵⁶

⁵⁰ Initial STA Application Narrative at 2.

⁵¹ *Bureau Order* ¶ 8.

⁵² Initial STA Application Narrative at 2.

⁵³ *Bureau Order* ¶ 18.

⁵⁴ *See* Letter from Dean A. Manson, EchoStar, to Marlene H. Dortch, Secretary, FCC, at 1-2, IBFS File No. SAT-STA-20130220-00023 (Mar. 13, 2013); Letter from Pantelis Michalopoulos, Steptoe & Johnson LLP, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-STA-20111004-00194 (Dec. 2, 2011).

⁵⁵ EchoStar Motion To Strike Supplement to Petition To Deny at 2-3, *EchoStar Satellite Operating Company; Request for Modification of Authorization to Move EchoStar 6 to, and Operate It at 96.2° W.L.*, IBFS File Nos. SAT-MOD-20130227-00026 *et al.* (Dec. 9, 2013).

⁵⁶ 47 C.F.R. §§ 25.114(c)(7), 25.280(a).

Fourth, as shown above, EchoStar has repeatedly represented that EchoStar 6 has been “in operation” at 96.2° W.L. since April 13, 2013. However, it recently admitted that it did not activate the communications payload until November 2013. Even that statement is incomplete and misleading, as EchoStar omitted the fact that only 1 of the 32 transponders on EchoStar 6 is activated today.

III. The Requested Operations Violate the DBS Freeze

Since 2005, the FCC has had in place a “freeze on DBS applications” that “applies to any application for authority to provide DBS service to the United States.”⁵⁷ This freeze includes “requests for special temporary authority” where “such applications seek authority to operate on frequencies and/or orbital locations not previously authorized for operation by that licensee” before the freeze was imposed.⁵⁸

The operations proposed for EchoStar 6 in the Initial STA Application — and the operations that EchoStar seeks to renew here — include a beam coverage that illuminates the entire southeastern United States.⁵⁹ Granting the STA thus would authorize broadcast of DBS signals to the United States in violation of the DBS freeze.⁶⁰

CONCLUSION

EchoStar’s most recent STA request should be denied.

⁵⁷ Public Notice, *DBS Service Auction Nullified*, 20 FCC Rcd 20618, 20619 (2005).

⁵⁸ *Id.*

⁵⁹ See Sharon Decl. ¶ 5 & Exh. D.

⁶⁰ See *San Juan Cable LLC v. Telecommunications Regulatory Bd. of P.R.*, 598 F. Supp. 2d 233, 236 (D.P.R. 2009) (a “limited test trial” counted as “offering a ‘cable service,’ as defined in the Cable Act”).

June 9, 2014

Respectfully submitted,

SPECTRUM FIVE LLC

/s/ David Wilson

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CERTIFICATE OF SERVICE

I, Daniel Dorris, hereby certify that a true and correct copy of the foregoing Opposition of Spectrum Five LLC was served on the following by First-Class U.S. Mail, postage prepaid, on June 9, 2014.

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