



July 30, 2014

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

Re: IBFS File Nos. SAT-MOD-20130227-00026, SAT-AMD-20130429-00063,  
SAT-AMD-20130613-00083, SAT-MOD-20140623-00074,  
SAT-STA-20130510-00067, SAT-STA-20130716-00093,  
SAT-STA-20130912-00115, SAT-STA-20131113-00131,  
SAT-STA-20140113-00004, SAT-STA-20140314-00031 &  
SAT-STA-20140513-00050  
Call Sign S2232

Dear Ms. Dortch:

EchoStar Satellite Operating Corporation (“EchoStar”) responds to Spectrum Five LLC’s (“Spectrum Five”) “Supplemental Opposition” against the above-referenced applications to modify the EchoStar 6 license and to extend the special temporary authorization (“STA”) to operate the EchoStar 6 satellite at 96.2° W.L.<sup>1</sup>

Consistent with the recent court decision dismissing Spectrum Five’s challenge against the initial STA grant,<sup>2</sup> the Commission should reject Spectrum Five’s similar claims against the modification and STA extension requests for lack of standing. Spectrum Five contends that the court decision does not bar the Commission from addressing the merits of its claims, but this argument misses the point entirely. Given that the court held that Spectrum Five has shown no redressable harm and thus no standing to oppose EchoStar 6’s operations at 96.2° W.L.,<sup>3</sup> it would be pointless for either the court or the Commission to proceed to the merits of Spectrum Five’s claims. Rather than offering any new or different set of facts that would support its standing to oppose EchoStar 6’s operations at 96.2° W.L., Spectrum Five is tellingly silent on this critical threshold issue.

In any event, Spectrum Five’s claims, including the new baseless claim that EchoStar 6 is operating in excess of the authorized power limit of 49.8 dBW,<sup>4</sup> offer no basis to deny the

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<sup>1</sup> See Supplemental Opposition of Spectrum Five, IBFS File Nos. SAT-STA-20130510-00067 *et al.* (July 15, 2014) (“Supplemental Opposition”).

<sup>2</sup> *Spectrum Five LLC v. FCC*, Nos. 13-1231 & 1232, slip op. at 4 (D.C. Cir. July 11, 2014).

<sup>3</sup> See *id.* at 13, 21-22.

<sup>4</sup> See Supplemental Opposition at 1-5.

applications on their merits. In raising its new claim, Spectrum Five fails to take into account EchoStar's other statements made in the initial STA application, including:

“The Commission has approved the operation of co-coverage BSS satellites at separations of less than 4.6 degrees—the separation in this case. The Commission has allowed such operations on the condition that they do not exceed the coordination triggers of Annex 1 of Appendix 30/30A for the protection of other BSS networks serving the United States, *unless successfully coordinated with potentially affected operators.*”<sup>5</sup>

EchoStar also made the commitment that “[w]hile at 96.2° W.L., EchoStar 6 *will operate pursuant to the BERMUDASAT-1 filing and any associated coordination agreements.*”<sup>6</sup>

Accordingly, Spectrum Five's claim is baseless because the 49.8 dBW peak EIRP that EchoStar proposed in its initial STA application has since been superseded by higher power levels allowed under the coordination agreement with DIRECTV.<sup>7</sup> As a result, attempting to measure EchoStar 6's compliance with the superseded 49.8 dBW limit is a pointless exercise. EchoStar 6 is being operated in compliance with the DIRECTV coordination agreement. If it were not, DIRECTV would raise the matter directly with EchoStar and/or the Commission. To date, EchoStar has received no complaint from DIRECTV regarding any violation of the agreed-upon power limits.

Moreover, the reliability of the measurements taken by Spectrum Five's consultant is questionable for numerous reasons, including: (i) no information explaining the measurement techniques and procedures has been disclosed; (ii) the EIRP measurements were performed with an antenna that was not in the proper polarization; (iii) correction factors were applied using NORAD TLE data, which do not accurately reflect real-time operations; (iv) the measurements were based upon an improper assumption of transponder operations “at or near saturation;”<sup>8</sup> and (v) the measurements are specified as absolute values with no margin of error, when in fact EIRP measurements for in-orbit satellites, particularly on modulated carriers, are known to have large measurement uncertainties.

Concerns about the accuracy of the measurement data are reinforced by Spectrum Five's incorrect statement that “SAT Corporation's measurements thus establish EchoStar 6's peak downlink EIRP at the boresight ranged from approximately 54.37 dBW to 56.09 dBW.”<sup>9</sup> This is not technically or physically possible since, as EchoStar indicated in its STA application, “[f]or operation at 96.2° W.L., the satellite will only be operated in medium power mode. In this

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<sup>5</sup> EchoStar STA Application, IBFS File No. SAT-STA-20130220-00023, Narrative, at 6 (Feb. 20, 2013) (emphasis added).

<sup>6</sup> *Id.* at 2 (emphasis added).

<sup>7</sup> The 49.8 dBW downlink EIRP limit was proposed before a coordination agreement had been reached.

<sup>8</sup> Supplemental Opposition, SAT Corporation Summary of Findings at 2 (attached to Exh. A, Declaration of Thomas E. Sharon).

<sup>9</sup> *Id.* at 3.

mode, the satellite is capable of transmitting with a peak downlink EIRP of 54.7 dBW.”<sup>10</sup> Therefore, considering this peak downlink EIRP and the fact that EchoStar 6 is not operating at saturation, there is a significant measurement error in the methodology submitted by Spectrum Five.

To date, Spectrum Five has submitted 23 filings on the initial STA application, more than 10 filings on the STA renewal applications, and five filings on the modification applications. Its submission of the Supplemental Opposition highlights its continued abuse of the regulatory process to pursue any and all claims, regardless of their merits and despite the court decision that Spectrum Five has no standing.

EchoStar urges the Commission to put an end to these frivolous filings by expeditiously granting the EchoStar 6 license modification and STA extension applications. The Commission also should dismiss Spectrum Five’s claims for lack of standing or, alternatively, deny them on the merits for the same reasons set forth in the Commission’s decisions granting and affirming the initial STA<sup>11</sup> and in EchoStar’s filings in the record.<sup>12</sup>

Sincerely,

/s/Jaime Londono

Jaime Londono  
Vice President, Advanced Programs and  
Spectrum Management

cc: Troy Tanner (FCC)  
Jennifer Gilsenan (FCC)  
Jose Albuquerque (FCC)  
Karl Kensinger (FCC)  
Stephen Duall (FCC)  
Scott Angstreich (Counsel for Spectrum Five)

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<sup>10</sup> EchoStar STA Application, Technical Analysis at 1 (attached as Exh. 2).

<sup>11</sup> See *EchoStar Satellite Operating Company*, Order and Authorization, 28 FCC Rcd 4229 (IB 2013), *aff’d*, 28 FCC Rcd 10412 (2013), *petition for review dismissed sub nom. Spectrum Five LLC v. FCC*, Nos. 13-1231 & 1232 (D.C. Cir. July 11, 2014).

<sup>12</sup> See, e.g., EchoStar Response to “Opposition,” IBFS File No. SAT-STA-20140113-00004 (Feb. 26, 2014); EchoStar Opposition to Petition to Deny, IBFS File Nos. SAT-STA-20130510-00067 *et al.* (June 3, 2013).