

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matters of	)	
	)	
EchoStar Satellite Operating Corporation	)	
	)	
Application for Modification of License for the	)	File Nos. SAT-MOD-20130227-00026
EchoStar 6 Satellite to Specify the 96.2° W.L.	)	SAT-AMD-20130429-00063
Orbital Location	)	SAT-AMD-20130613-00083
	)	Call Sign S2232
	)	
Applications to Extend Special Temporary	)	File Nos. SAT-STA-20130510-00067
Authority to Operate the EchoStar 6	)	SAT-STA-20130716-00093
Satellite at the 96.2° W.L. Orbital Location	)	SAT-STA-20130912-00115
	)	SAT-STA-20131113-00131
	)	SAT-STA-20140113-00004
	)	SAT-STA-20140314-00031
	)	SAT-STA-20140513-00050
	)	SAT-STA-20140711-00085
	)	Call Sign S2232

**OPPOSITION TO PETITION FOR RECONSIDERATION AND REQUEST FOR  
REFERRAL TO THE FULL COMMISSION**

EchoStar Satellite Operating Company (collectively with its affiliates, “EchoStar”) opposes Spectrum Five LLC’s (“Spectrum Five”) “Petition for Reconsideration and Request for Referral of the Petition to the Full Commission” (or “Petition”)<sup>1</sup> with respect to the *EchoStar Order* adopted regarding the above-captioned applications (“Applications”).<sup>2</sup> In granting the Applications, the International Bureau and Office of Engineering and Technology (collectively, the “Bureau”) properly rejected Spectrum Five’s claims and found that authorizing EchoStar’s operations at 96.2° W.L. serves the public interest and is consistent with FCC precedent.

<sup>1</sup> See Spectrum Five Petition (Sept. 10, 2014). Unless otherwise specified, all filings cited herein are in reference to the above-captioned proceeding.

<sup>2</sup> See *EchoStar Satellite Operating Corporation*, Order and Authorization, 29 FCC Rcd 9615 (IB & OET 2014) (“*EchoStar Order*”).

EchoStar has invested billions of dollars in developing, constructing, and launching a network of fixed, mobile, and broadcast satellites that provide a wide array of services including direct-to-home video and broadband. Today, EchoStar provides service to millions of customers in the United States and North America, as well as around the world.<sup>3</sup>

Spectrum Five – a nine-year old license holding company that does not operate a single satellite and has had two licenses revoked for failure to construct – continues to use the regulatory process in an attempt to achieve its own self-interested goals. Its Petition merely rehashes unsubstantiated legal and technical claims that both the full Commission and the Bureau already have properly rejected.<sup>4</sup> Spectrum Five’s arguments ignore the fleet management flexibility that the Commission has traditionally afforded licensees and are completely at odds with ITU rules and policies.

Rescinding the authorizations granted under the *EchoStar Order* would undermine satellite fleet management, allow scarce spectral resources to go unused, adversely impact the operations of a satellite that has reached and is already operating at 96.2° W.L., introduce regulatory uncertainty regarding the FCC’s satellite service flexibility policies, and ultimately deprive consumers of new services. Accordingly, the Bureau should deny the Petition.

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<sup>3</sup> EchoStar is also planning to provide services in other markets, including Brazil, where it has obtained the rights to the 45° W.L. orbital location to provide direct-to-home, broadband, and mobile satellite services.

<sup>4</sup> See *EchoStar Satellite Operating Company*, Order and Authorization, 28 FCC Rcd 4229 (IB 2013) (“*STA Grant*”), *stay denied*, 28 FCC Rcd 5475 (IB 2013), *review denied*, 28 FCC Rcd 10412 (2013) (“*STA Affirmance*”), *appeal dismissed*, *Spectrum Five LLC v. FCC*, Nos. 13-1231 & 13-1232 (D.C. Cir. July 11, 2014).

**I. SPECTRUM FIVE HAS NO STANDING TO SEEK RECONSIDERATION, AND ITS PETITION IS PROCEDURALLY DEFECTIVE**

As a threshold matter, Spectrum Five has no standing to seek reconsideration of the *EchoStar Order*. Moreover, the Petition is procedurally defective because it: (i) impermissibly alleges for the first time a new basis for standing that is unrelated to any changed circumstances or previously unknown facts; (ii) lacks the requisite affidavit from a qualified radio engineer to support its harmful interference claim; and (iii) effectively seeks full Commission review based upon new questions of fact or law not previously raised in this proceeding.

Section 1.106(b)(1) of the Commission’s rules permits only a “party to the proceeding” or “other person whose interests are adversely affected” to file a petition for reconsideration.<sup>5</sup> Additionally, Section 1.106(c) permits FCC reconsideration only if: (i) the facts or arguments raised in a petition relate to changed circumstances or were unknown to the petitioner until after the last opportunity to present them to the FCC; or (ii) the FCC determines that consideration of the new facts or arguments is required in the public interest.<sup>6</sup> Spectrum Five’s Petition meets neither Section 1.106(b)(1)’s nor Section 1.106(c)’s requirements.

Prior to its Petition, Spectrum Five’s purported standing has been premised upon claims that EchoStar 6’s authorized operations at 96.2° W.L. allowed the U.K. filing for the BERMUDASAT-1 network to be brought into use and entered into the International Telecommunication Union’s (“ITU”) Master Register, thus blocking any potential 12/17 GHz

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<sup>5</sup> 47 C.F.R. § 1.106(b)(1). To demonstrate standing under Section 1.106(b)(1) of the Commission’s rules and Section 309(d) of the Communications Act of 1934, as amended (47 U.S.C. § 309(d)), a petitioner must demonstrate both a “direct injury” and a “causal link between the claimed injury and the challenged action.” *See Applications of AT&T Inc. and Deutsche Telecom AG for Consent to Assign or Transfer Control of Licenses and Authorizations*, 27 FCC Rcd 4423, ¶ 8 (2012). To demonstrate a causal link, a petitioner “must establish that the injury can be traced to the challenged action and the injury would be prevented or redressed by the relief requested.” *Id.*

<sup>6</sup> 47 C.F.R. § 1.106(c).

Direct Broadcast Satellite (“DBS”) service that Spectrum Five may or may not be authorized in the future to provide to the United States from the 95° W.L. orbital location.<sup>7</sup>

Because the U.S. Court of Appeals for the D.C. Circuit soundly rejected these claims and ruled that Spectrum Five has shown no redressable harm, and thus no standing, to oppose the initial STA grant,<sup>8</sup> Spectrum Five now fashions for the first time an entirely new standing argument, oddly based upon alleged harmful interference from its theoretical reverse-band 17/24 GHz BSS satellite at 95.15° W.L. to the EchoStar 6 satellite.<sup>9</sup> Spectrum Five, however, has shown no changed circumstances, no unknown facts, and no public interest reasons to support its new standing argument, contrary to Section 1.106(c)’s requirements. Its harmful interference claim also is unsupported by an affidavit from a qualified radio engineer, as required under Section 1.106(e).<sup>10</sup>

Furthermore, Spectrum Five’s “request for referral” to the full Commission is effectively an application for review. Section 1.115(c) of the Commission’s rules, however, precludes Commission grant of an application for review that relies on new questions of fact or law.<sup>11</sup> Because the Petition relies on new questions of fact or law not previously raised in this proceeding, it should be rejected under Section 1.115(c).

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<sup>7</sup> See, e.g., Spectrum Five Petition to Deny, File Nos. SAT-MOD-20130227-00026 *et al.*, at 14-15 (June 3, 2013); Spectrum Five Petition to Deny Applications for Renewal of Special Temporary Authority, File Nos. SAT-STA-20130510-00067 *et al.*, at 2, 4 (May 22, 2013); see also Supplemental Opposition of Spectrum Five, File Nos. SAT-STA-20130510-00067 *et al.* (July 15, 2014) (providing no new or additional basis for standing).

<sup>8</sup> See *Spectrum Five LLC v. FCC*, Nos. 13-1231 & 1232, slip op. at 4 (D.C. Cir. July 11, 2014).

<sup>9</sup> See Spectrum Five Petition at 23-25.

<sup>10</sup> See 47 C.F.R. § 1.106(e).

<sup>11</sup> See *id.* § 1.115(c).

Even if the Bureau decides to entertain the new standing argument, Spectrum Five has shown neither direct injury nor a causal link between the claimed injury and grant of the Applications. The only claimed injury to Spectrum Five is a hypothetical modification of its reverse-band BSS license that the Commission may or may not adopt in the future to protect EchoStar 6's operations against potential harmful interference from a reverse-band BSS satellite that may never be deployed. This satellite is at best years away from completion of construction or launch, and the Commission to date has not found that Spectrum Five has met any milestone requirements.<sup>12</sup> Based upon its prior history of failing to meet satellite milestone requirements,<sup>13</sup> whether or not Spectrum Five ultimately will launch and operate a reverse-band BSS satellite at 95.15° W.L., or any satellite for that matter, remains to be seen. Thus, any harm to Spectrum Five's planned reverse-band BSS satellite is purely theoretical, remote, and precisely the type of speculative harm that both the court and the Commission have found to result in Spectrum Five's lack of standing.<sup>14</sup>

In any event, the Bureau decisively found that EchoStar's commitments to accept interference from Spectrum Five's planned reverse-band BSS satellite "resolve any question concerning prejudice to Spectrum Five's U.S. licensed satellite from operations of EchoStar 6."<sup>15</sup>

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<sup>12</sup> The license for this proposed spacecraft requires launch and operation to occur by August 30, 2016. See *95 License Subsidiary LLC*, Stamp Grant, File Nos. SAT-LOA-20090807-00084, SAT-AMD-20100528-00114, SAT-AMD-20100729-00170, SAT-AMD-20110503-00084 (granted Aug. 30, 2011).

<sup>13</sup> For example, Spectrum Five's authority to access the U.S. market from two satellites it proposed to operate at the 114.5° W.L. orbital location was revoked in 2011 after it ceased all construction activities on the spacecraft. See *Spectrum Five LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10448, ¶ 1 (IB 2011).

<sup>14</sup> *Spectrum Five LLC v. FCC*, slip op. at 21; *STA Affirmance* ¶ 17.

<sup>15</sup> *STA Grant* ¶ 13.

The full Commission similarly agreed that “any significant concern about potential interference to other operational satellites or planned U.S.-licensed satellites [has been removed].”<sup>16</sup>

Thus, because Spectrum Five has shown no direct harm and no causal link, it has no standing to object, and its Petition should be dismissed on this basis alone.

## **II. THE PETITION OFFERS NO BASIS FOR RECONSIDERATION OF THE *ECHOSTAR ORDER***

Even on its merits, the Petition provides no basis for reconsideration of the *EchoStar Order* and should be denied. Under Section 1.106(p) of the Commission’s rules, the Commission may dismiss or deny a petition for reconsideration for reasons such as (i) failing to identify a material error warranting reconsideration; and (ii) relying on arguments that have been fully considered and rejected.<sup>17</sup> Because the Petition identifies no material FCC error and relies on arguments that have been fully considered and rejected, it should be rejected on the merits. Indeed, in the *EchoStar Order*, the Bureau found that many of Spectrum Five’s claims “seek to re-argue matters raised and ruled on in connection with the initial STA grant” and thus declined to address those claims again.<sup>18</sup> This finding applies with even greater force to the few claims that Spectrum Five has chosen to reiterate once again in its Petition.

### **A. The Bureau Lawfully Waived the Frequency Allocation Rules**

Contrary to Spectrum Five’s contention, the FCC has authority to license EchoStar 6’s operations as fixed satellite service (“FSS”) and mobile satellite service (“MSS”) operations on a non-harmful interference basis, and it may do so pursuant to a waiver of the U.S. Table of

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<sup>16</sup> *STA Affirmance* ¶ 13.

<sup>17</sup> *See* 47 C.F.R. § 1.106(p).

<sup>18</sup> *See EchoStar Order* ¶ 7.

Frequency Allocations on its own motion. As Spectrum Five acknowledges,<sup>19</sup> both the full Commission and the Bureau previously affirmed that EchoStar 6's U.S. operations may be authorized as FSS and MSS, and thus rejected Spectrum Five's argument that such operations must be categorized as DBS/BSS.<sup>20</sup> The Bureau again considered Spectrum Five's argument, including the contention that EchoStar did not request a waiver of the allocation rules, and responded by granting such a waiver on its own motion,<sup>21</sup> as it is permitted to do under Section 1.3 of the Commission's rules.<sup>22</sup> Further, the ITU Radio Regulations allow use of BSS Plan assignments for FSS,<sup>23</sup> and the definition of BSS/DBS overlaps with those of FSS and MSS, as the FCC has noted in court filings.<sup>24</sup>

In granting the waiver, the Bureau found good cause based on the public interest benefits of the existing international coordination arrangement, as discussed in the *STA Grant* and *STA Affirmance*.<sup>25</sup> The Bureau further explained that: (i) the technical characteristics of EchoStar 6's authorized U.S. operations are consistent with FSS/MSS operations; and (ii) any DBS/BSS service that might be provided through EchoStar 6 would be limited to locations entirely outside of the United States and should not be subject to FCC rules (*e.g.*, programming set asides and

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<sup>19</sup> See Spectrum Five Petition at 11.

<sup>20</sup> See *STA Affirmance* ¶ 8; *STA Grant* ¶ 16.

<sup>21</sup> See *EchoStar Order* ¶ 17.

<sup>22</sup> See 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion ... if good cause therefor is shown.”).

<sup>23</sup> See ITU Radio Regs. § 5.492.

<sup>24</sup> See FCC Br. at 49 n.12, *Spectrum Five LLC v. FCC* (Dec. 23, 2013).

<sup>25</sup> See *EchoStar Order* ¶ 17. In response to a different issue, the Bureau noted that “denial of [EchoStar's] modification application would not result in removal of the BERMUDASAT-1 entry from the ITU Master Register.” *Id.* ¶ 15. Contrary to Spectrum Five's suggestion, the Bureau found that grant of the modification application will serve the public interest for reasons previously articulated, including preserving the benefits of the coordination agreement. See *id.* ¶ 7 (citing *STA Affirmance*).

U.S. coverage requirements) applicable to DBS services within the United States.<sup>26</sup> Thus, the Bureau fully justified its waiver grant, and Spectrum Five’s warmed-over argument against the waiver should be rejected as repetitive under Section 1.106(p) of the FCC’s rules.

**B. The Bureau Properly Found That EchoStar 6 Will Not Cause Harmful Interference to Any Other Satellite**

Both the full Commission and the Bureau have fully addressed Spectrum Five’s unsubstantiated interference claim,<sup>27</sup> and its attempt to revive this claim should be rejected under Section 1.106(p) of the FCC’s rules as repetitive and unsupported by the required affidavit.<sup>28</sup> Moreover, Spectrum Five’s suggestion that EchoStar should be required to submit an interference analysis accounting for the effects of EchoStar 6’s inclined orbit operations is contrary to Section 25.280(a) of the FCC’s rules, which permits licensees to operate in inclined orbit mode without prior FCC approval.<sup>29</sup> Further, as the Bureau correctly found, Spectrum Five’s unauthorized power level claim, even if valid, does not warrant denial of the Applications, but rather should be addressed in other proceedings.<sup>30</sup>

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<sup>26</sup> *See id.* ¶ 18.

<sup>27</sup> *See id.* ¶ 8 (EchoStar “appropriately provided information to establish that its operations will not cause harmful interference to any operating satellite”); *STA Affirmance* ¶ 13 (“any significant concern about potential interference to other operational satellites or planned U.S.-licensed satellites [has been removed]”).

<sup>28</sup> *See* 47 C.F.R. § 1.106(p) (petitions for reconsideration that “plainly do not warrant consideration by the Commission may be dismissed or denied” for reasons such as relying on facts or arguments not previously raised and omitting the requisite affidavit to support an interference claim).

<sup>29</sup> *See* 47 C.F.R. § 25.280(a).

<sup>30</sup> *See EchoStar Order* ¶ 19.

### **C. The Bureau Properly Declined to Revisit Spectrum Five's Public Interest Objections**

The full Commission and the Bureau previously concluded that EchoStar 6's operations at 96.2° W.L. serve the public interest.<sup>31</sup> Thus, the Bureau properly declined to revisit Spectrum Five's objections against the Commission's public interest findings and reaffirmed that EchoStar 6's operations "will serve the public interest by facilitating possible development of new services to the Atlantic Ocean region."<sup>32</sup> Spectrum Five's public interest objections here are repetitive and thus should continue to be rejected as such under Section 1.106(p) of the FCC's rules.<sup>33</sup>

### **III. CONCLUSION**

As demonstrated above, Spectrum Five has failed to establish standing or to justify FCC reconsideration of the *EchoStar Order*. Rescinding EchoStar 6's authorization to continue operating at 96.2° W.L. would reward anti-competitive regulatory strategies, severely limit the fleet management and service flexibility typically accorded to satellite licensees, deprive consumers of valuable new services, and foreclose the pursuit of a viable international development opportunity by a U.S.-licensed satellite operating company. Accordingly, the

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<sup>31</sup> See *STA Affirmance* ¶ 9; *STA Grant* ¶ 9.

<sup>32</sup> *EchoStar Order* ¶¶ 1, 7.

<sup>33</sup> See 47 C.F.R. § 1.106(p).

Commission should dismiss or deny the Petition and reject Spectrum Five's ongoing abuse of the regulatory process to prevent deployment of service to the public.

Respectfully submitted,

**ECHOSTAR SATELLITE OPERATING  
CORPORATION**

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September 24, 2014

**CERTIFICATE OF SERVICE**

I, Theresa Rollins, hereby certify that on September 24, 2013, a copy of the foregoing Opposition is being hand delivered to the following:

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