

RECEIVED

MAY - 6 2004

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Received

MAY 20 2004

Policy Branch
International Bureau

SES

File No. SAT-LFS-20040112-00023

DIRECTV Enterprises, LLC)
)
Request for Blanket Authorization)
to Provide DBS Service in the U.S.)
Market from the Canadian BSS)
Position at 72.5° W.L.)

OPPOSITION AND REPLY COMMENTS

DIRECTV Enterprises, LLC ("DIRECTV") hereby opposes the Petition to Deny of Pegasus Development Corporation ("Pegasus") and the Comments of EchoStar Satellite, LLC ("EchoStar") in the above-captioned proceedings.

Pegasus's two-page petition to deny merely repeats and incorporates by reference its allegations already made in related proceedings pending before the Commission, to which DIRECTV has fully responded. Accordingly, DIRECTV submits and incorporates by reference the arguments set forth in Exhibit A hereto.

As DIRECTV has demonstrated in these filings, its arrangement with Telesat Canada ("Telesat") will dramatically expand its local-into-local service using Canadian BSS spectrum at the 72.5° W.L. orbital position.¹ This spectrum is essentially "found" capacity for U.S. DBS

¹ Pegasus's suggestion that the public has been unable to fully review the agreements between DIRECTV and Telesat, *see* Pegasus Petition at 2 & n. 3, is wrong. The confidential treatment sought by DIRECTV and Telesat with respect to their agreements has now been addressed by the International Bureau's implementation of a protective order, *Order*, File No. SAT-STA-20030903-00300 (rel. Mar. 22, 2004), which has allowed outside and certain inside representatives of Pegasus and other interested parties to fully evaluate the documentation in question, *and* to submit additional comment on the record in these proceedings, while also preserving the confidential nature of the

service, the use of which will not diminish U.S. orbital spectrum resources, and which will permit DIRECTV to offer local-into-local service into 130 DMAs by 2004. The Commission has already acknowledged this result as a tangible public interest benefit that will increase U.S. MVPD competition in each additional DMA served,² benefiting U.S. consumers “through increased choice, lower prices, or both.”³ And contrary to Pegasus’s allegations, this result is fully supported by the Commission’s *DBAC Order*⁴ and related precedents – as DIRECTV and others have shown.⁵

For its part, EchoStar’s plea to roll the merits of DIRECTV’s applications into a rulemaking proceeding similarly has been addressed in DIRECTV’s previous filings. It should be recognized for what it is – an anticompetitive attempt to make it as difficult as possible for DIRECTV to increase its local channel service. The Commission should reject EchoStar’s transparent effort out of hand.

DIRECTV urges the Commission to grant the above-referenced application (and related applications) promptly. Doing so will serve the interests of U.S. MVPD competition generally and will provide thousands of U.S. consumers with tangible improvements to their MVPD service by the end of this year.

agreements. Pegasus’s call for additional public disclosure is unwarranted and would affirmatively harm DIRECTV and Telesat.

² *News/Hughes Order* at ¶¶ 363, 369.

³ Public Notice, MB Docket No. 03-124, *Subject to Conditions, Commission Approves Transaction Between General Motors Corporation, Hughes Electronics Corporation and The News Corporation Limited* (rel. Dec. 19, 2003), at 14.

⁴ In the Matter of Digital Broadband Applications Corp., File No. SES-LIC-20020109-00023, DA 03-15, at ¶ 4 (May 7, 2003) (“DBAC Order”).

⁵ See, e.g., National Rural Telecommunications Cooperative, *Ex Parte* Letter to Marlene H. Dortch, Secretary (April 28, 2004), at 5-7. This filing is also submitted for the record in this proceeding and is attached as Exhibit B.

Respectfully submitted,

DIRECTV ENTERPRISES, LLC

By: 

Gary M. Epstein

James H. Barker

LATHAM & WATKINS LLP

555 Eleventh Street, N.W.

Washington, D.C. 20005

Phone: (202) 637-2200

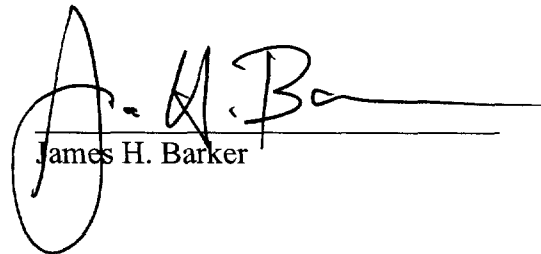
Counsel for DIRECTV Enterprises, LLC

May 6, 2004

CERTIFICATE OF SERVICE

I, James H. Barker, certify that on this 6th day of May, 2004, a copy of the foregoing Opposition and Reply Comments was sent by hand-delivery to the following:

Bruce Jacobs
Tony Lin
Shaw Pittman, LLP
2300 N Street, N.W.
Washington, D.C. 20037-1128



James H. Barker

EXHIBIT A

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

RECEIVED
MAR - 3 2004
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
DIRECTV Enterprises, LLC)
)
Request for Special Temporary Authority)
to Relocate DIRECTV 5 to 72.5° W.L.)
and to Conduct Telemetry, Tracking and)
Command ("TT&C") Operations)
for an Interim Period)

File No. SAT-STA-20040107-00002

OPPOSITION AND REPLY COMMENTS OF DIRECTV ENTERPRISES, LLC

DIRECTV, INC.

Gary M. Epstein
James H. Barker
LATHAM & WATKINS LLP
555 Eleventh Street, N.W.
Washington, D.C. 20005
Phone: (202) 637-2200

Counsel for DIRECTV, Inc.

March 3, 2004

TABLE OF CONTENTS

I.	INTRODUCTION & SUMMARY.....	1
II.	PEGASUS HAS SHOWN NO BASIS FOR DENYING DIRECTV'S REQUESTED STA.....	2
A.	The Grant Of DIRECTV's Requested STA Serves The Public Interest By Facilitating The Delivery Of Local-Into-Local Service To 130 DMAS And Is Supported By The Commission's <i>DBAC Order</i>	2
B.	The Commission's Policy Of Promoting Mutual Assistance By U.S. And Canadian Satellite Operators Also Supports A Grant Of The Requested STA.....	7
C.	Pegasus Should Not Be Permitted To Abuse The Commission's Regulatory Processes As A Surrogate For Its Own Competitive Disappointments.....	9
III.	THERE IS NO LOGICAL OR POLICY REASON FOR THE COMMISSION TO LINK DIRECTV'S STA REQUEST TO A RULEMAKING PROCEEDING ON REDUCED ORBITAL SPACING.....	11
IV.	CONCLUSION	14

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

In the Matter of)	
)	
DIRECTV Enterprises, LLC)	
)	
Request for Special Temporary Authority)	File No. SAT-STA-20040107-00002
to Relocate DIRECTV 5 to 72.5° W.L.)	
and to Conduct Telemetry, Tracking and)	
Command ("TT&C") Operations)	
for an Interim Period)	

OPPOSITION AND REPLY COMMENTS OF DIRECTV ENTERPRISES, LLC

DIRECTV Enterprises, LLC ("DIRECTV") hereby opposes the Petition to Deny of Pegasus Development Corporation in the above-captioned matter, and offers its reply comments to the comments of other parties in this proceeding.

I. INTRODUCTION & SUMMARY

As set forth in the above-captioned request for special temporary authority ("STA") and related earth station applications, pursuant to a contractual arrangement with Canada's premier satellite operator, Telesat Canada ("Telesat"), DIRECTV has agreed, subject to obtaining the requisite Commission approvals, to make its DIRECTV 5 satellite available for Telesat to develop the BSS orbital position at 72.5° W.L. assigned to Canada by the International Telecommunication Union ("ITU"). As described, DIRECTV intends to utilize the satellite capacity of DIRECTV 5 at 72.5° W.L. to fulfill its commitment to provide satellite-delivered local broadcast channels by December 31, 2004, to at least 130 designated market areas

("DMAs"), thereby promoting aggressively the Commission's dual policy goals of localism and competition in the multichannel video programming distribution ("MVPD") marketplace.

Two parties, Pegasus and EchoStar, have responded substantively on the merits of DIRECTV's requested STA, Pegasus in a Petition to Deny and EchoStar in Comments.¹ As set forth below, these filings are opportunistic attempts to hamper DIRECTV as a competitor that, if heeded, would clearly harm the public interest. They provide no basis for denying or delaying the prompt grant of the STA.

II. PEGASUS HAS SHOWN NO BASIS FOR DENYING DIRECTV'S REQUESTED STA

A. The Grant Of DIRECTV's Requested STA Serves The Public Interest By Facilitating The Delivery Of Local-Into-Local Service To 130 DMAs And Is Supported By The Commission's *DBAC Order*

Pegasus argues that DIRECTV's requested STA should not be granted because the Commission has a "policy," allegedly articulated in the *DBAC Order*,² of "restricting domestic

¹ See Pegasus Development Corporation, Petition to Deny (Feb. 17, 2004) ("Pegasus Petition"); Comments of EchoStar Satellite L.L.C. (Feb. 17, 2004) ("Comments of EchoStar"). SES Americom has asked the Commission to defer action on the STA request until the Commission considers DIRECTV's related blanket earth station application, *see* Petition to Defer and Comments of SES Americom, Inc. (Feb. 17, 2004), and Rainbow DBS Company LLC has reserved its rights to comment on both the STA request and the blanket license request at the same time when the latter is placed on public notice. *See* Letter to Marlene Dortch, Secretary, FCC, from Benjamin J. Griffin, Counsel for Rainbow DBS Company LLC. In response to these filings, DIRECTV does not oppose this STA request being considered in conjunction with its blanket licensing application, provided that processing of these applications occurs expeditiously.

² In the Matter of Digital Broadband Applications Corp., File No. SES-LIC-20020109-00023, DA 03-15, at ¶ 4 (May 7, 2003) ("DBAC Order").

use of Canadian-licensed BSS satellites to new entrants.”³ There is no such FCC policy. Indeed, a grant of DIRECTV’s requested STA would be entirely consistent with the *DBAC Order*.

The *DBAC Order* is a specific application of the analytical and policy framework, including the Commission’s effective competitive opportunities for satellite (“ECO-Sat”) test, set forth in the *DISCO II Order*.⁴ Because DIRECTV has proposed to serve the United States from a Canadian orbital position being developed by Telesat, and DIRECTV 5 will become a Canadian-licensed satellite, DIRECTV’s applications anticipate that the Commission may need to evaluate the proposed relocation and operation of DIRECTV 5 under the *DISCO II* regime applying the ECO-Sat test as it did DBAC’s proposal. This public interest analysis can include consideration of a number of factors, including the effect on competition in the United States, eligibility and operating requirements, spectrum availability, and national security, law enforcement, foreign policy and trade concerns.⁵

Preliminarily, DIRECTV notes that the Pegasus Petition makes no effort to thoughtfully apply the *DISCO II* framework to the facts of this case. The Commission’s ECO-Sat analysis under the *DISCO II* regime focuses initially on the licensing or coordinating administration of the space station in question because “it is almost always true that the nationality of the satellite owner is the same as that of the licensing country or administration and that the primary service supplier’s principal place of business will be located where the satellite is licensed or

³ Pegasus Petition at 3.

⁴ Amendment of the Commission’s Policies to Allow Non-U.S. Licensed Space Stations Providing Domestic and International Service in the United States, 12 FCC Rcd 24094 (1997) (“*DISCO II Order*”). See also 47 C.F.R. § 25.137(a)(2).

⁵ See *DISCO II Order* at ¶¶ 30-182.

coordinated.”⁶ However, the Commission has explicitly stated that “in appropriate cases” it would consider a “system operator’s principal place of business” and not limit its inquiry to the licensing administration.⁷ In this case, DIRECTV’s proposal involves a U.S.-owned satellite being utilized by a U.S.-based satellite operator and being used to serve U.S. consumers. Because there is no true access to the United States being sought by a Canadian BSS operator, the Commission would be justified in concluding that there are no “effective competitive opportunity” concerns implicated by DIRECTV’s STA request and associated earth station applications.

Moreover, if the *DISCO II* framework were applied using Canada as the “home market,” grant of the requested STA would demonstrably serve the public interest. Last year, the Commission authorized DBAC to provide subscription video services in the United States using Telesat’s Nimiq satellites operating at Canadian orbital positions,⁸ even though Canada still retains a legal barrier to U.S. satellites seeking to offer such services in that country, because multichannel video competition in the United States would be enhanced rather than distorted.⁹ It is true that in the particular circumstances addressed by the Commission in the *DBAC Order*, the public interest justification relied upon by the Commission focused upon increased MVPD competition as a result of DBAC’s potential entry into the U.S. market as a non-incumbent MVPD. But Pegasus’s extrapolation of that affirmative point into the sweeping proscription that

⁶ *DISCO II Order* at ¶ 53.

⁷ *Id.*

⁸ *DBAC Order* at ¶ 4.

⁹ *Id.* at ¶¶ 15-18.

the *DBAC Order* “thus specifically excludes DIRECTV, which is a dominant incumbent, from such an arrangement”¹⁰ is wrong and a misreading of the decision.

The *DBAC Order* applied in straightforward fashion the proposition from the Commission’s *DISCO II* policy framework that the presence of a *de jure* barrier to the provision of service by a U.S.-licensed operator in a foreign country will generally yield a U.S. refusal to grant access to the U.S. market by an operator licensed in the foreign country “*unless there is a compelling public interest reason to do otherwise.*”¹¹ The Commission does not rely upon its ECO-Sat test in isolation; it instead takes a further step to evaluate “whether any additional countervailing public interest factors weigh in favor of a result different from the one we would reach under the ECO-Sat analysis alone.”¹² In making such a public interest assessment in the *DBAC Order*, the Commission focused on the key factor of “the effect that foreign entry will have on competition *in* the United States.”¹³ In so doing, the Commission concluded that DBAC’s entry into the U.S. market would be pro-competitive.

A similar analysis in this case yields an even more direct and powerful conclusion that DIRECTV’s proposed use of Canadian BSS orbital spectrum is in the public interest. The Commission’s most recent competitive assessment of the MVPD marketplace has determined

¹⁰ Pegasus Petition at 3.

¹¹ *DBAC Order* at ¶ 15 (quoting *DISCO II NPRM*, 11 FCC Rcd 18178, 18192 (1996)) (emphasis in original).

¹² *Id.* (quoting *DISCO II NPRM*, 11 FCC Rcd at 18185).

¹³ *Id.* (emphasis in original).

that cable operators continue to dominate the MVPD market with a 75% share.¹⁴ Thus, DIRECTV clearly is not “dominant,” as DBAC states.¹⁵ In its recent approval of the investment by News Corporation in DIRECTV’s parent company, Hughes Electronics Corporation, the Commission observed:

[W]hile the two primary incumbent DBS competitors have attracted enough subscribers nationwide to rank them among the largest MVPDs, they rank far behind cable operators in most local markets, including all the most populous urban areas. Cable remains the predominant provider of MVPD services in these markets.¹⁶

Given *cable*’s dominance, the Commission characterized “improved service offerings” and increased local channel service by DIRECTV into 130 DMAs by 2004 as tangible public interest benefits that would increase U.S. MVPD competition.¹⁷ Moreover, the Commission found that in each additional DMA served the provision of local-into-local service will present a significant increase in MVPD competition and will benefit U.S. consumers “through increased choice, lower prices, or both.”¹⁸

In other words, the Commission has *already* found that the goal of DIRECTV’s proposed use of the 72.5° W.L. orbital location – providing local-into-local service in more markets – will

¹⁴ See In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, *Tenth Annual Report*, MB Docket No. 03-172 (rel. Jan. 28, 2004), at ¶¶ 124, 4.

¹⁵ Pegasus Petition at 3.

¹⁶ *News/Hughes Order* at ¶ 361 (footnotes omitted).

¹⁷ See *id.* at ¶¶ 363, 369.

¹⁸ Public Notice, MB Docket No. 03-124, *Subject to Conditions, Commission Approves Transaction Between General Motors Corporation, Hughes Electronics Corporation and The News Corporation Limited* (rel. Dec. 19, 2003), at 14.

increase competition among U.S. MVPDs and otherwise serve the public interest. In the parlance of the *DBAC Order*, the Commission thus has already acknowledged that these public interest benefits are “compelling.” As in the *DBAC Order*, the public interest benefits cited will be realized by U.S. consumers without impacting any U.S. orbital spectrum resources. But here, unlike in the *DBAC Order*, the public interest benefits can (indeed, because of the Commission’s requirements in the *News/Hughes Order*, *must*) be implemented immediately.

In the final analysis, from the standpoint of assessing “the Commission’s broad policy goal to promote competition,”¹⁹ DIRECTV intends to do just that – by utilizing the capacity of DIRECTV 5 at 72.5° W.L. to achieve significant expansion of its local-into-local service, which the Commission has determined to be an “important public interest objective.”²⁰ The Commission should grant promptly the requested STA and associated earth station applications so that these goals can be achieved.

B. The Commission’s Policy Of Promoting Mutual Assistance By U.S. And Canadian Satellite Operators Also Supports A Grant Of The Requested STA

The 1972 exchange of letters between the U.S. and Canadian governments (and subsequent exchanges) reflects a policy recognition that it is in the collective interest of the U.S. government and U.S. consumers to allow the satellite operators of each country to assist the other in times of need, because the benefits of such aid have been and will continue to be

¹⁹ Pegasus Petition at 4.

²⁰ Public Notice, MB Docket No. 03-124, *Subject to Conditions, Commission Approves Transaction Between General Motors Corporation, Hughes Electronics Corporation and the News Corporation Limited* (rel. Dec. 19, 2003), at 14.

realized reciprocally by the citizens of both countries.²¹ Pegasus asserts that “there is no evidence or support that the proposed use of 72.5° W.L. would be relevant to any legitimate Canadian interest or need for capacity.”²² Pegasus again is wrong.

DIRECTV’s arrangements with Telesat literally are embodiments of the principle of mutual assistance. As DIRECTV has already emphasized in the separate STA proceeding involving DIRECTV 3,²³ this public policy supports the use of that satellite to restore capacity lost on the Canadian Nimiq 2 satellite. Here, in the same vein, the proposed use of the DIRECTV 5 satellite will help Telesat begin its development of the 72.5° W.L. orbital position assigned to Canada under the ITU BSS Plan. Canada has filed for certain modifications to the Plan at this location, including the ability to cover the United States. In order to preserve its international priority for these modifications at 72.5° W.L., Canada must meet a July 2005 ITU deadline to bring a satellite into use at this location. It is virtually impossible for a new BSS satellite to be procured, constructed and launched within this time frame – meaning that there is indeed a real and imminent Canadian capacity need that will be addressed by the proposed relocation of DIRECTV 5.

Nor is there any objective merit to Pegasus’s self-serving suggestion that the Commission deny DIRECTV’s application in order to secure more spectrum for “Pegasus and other new

²¹ Letter from Mr. Bert W. Rein (U.S. Department of State) to the Hon. Kenneth B. Williams (Minister, Embassy of Canada) (Nov. 7, 1972).

²² Pegasus Petition at 5.

²³ See *Public Notice*, Report No. SAT-00168 (Sept. 26, 2003).

entrants.”²⁴ Canada filed a second ITU modification of its assignment at 72.5° W.L. in October 2003. This means that Canada will have ITU “date priority” over any subsequently-filed U.S. modifications in any event and would require the United States to seek agreement with Canada. Thus, Pegasus’s assertion on this point is not only misguided but ineffective even considered on its own terms.

On the U.S. side of the equation, the relocation of DIRECTV 5 will address an urgent need of DIRECTV in the near term. As explained above, the satellite will provide the capacity that is required to meet the important U.S. policy goal of delivering local broadcast channels to more U.S. consumers by the end of 2004.

In this case, it is not only clear that “the Commission’s mutual assistance policy could be applied here,”²⁵ it is clear that the Commission’s mutual assistance policy *should* be applied here. Pegasus’s arguments to the contrary are without merit.

C. Pegasus Should Not Be Permitted To Abuse The Commission’s Regulatory Processes As A Surrogate For Its Own Competitive Disappointments

In many of its recent filings, Pegasus seeks to portray DIRECTV as secretly, deliberately and anticompetitively working to foreclose Pegasus from obtaining access to satellite spectrum resources. Of course, none of these hyperbolic characterizations is accurate or supported by the facts.

The reality is that Pegasus holds a number of Ka band authorizations covering thousands of MHz of spectrum,²⁶ and has a number of applications pending for domestic FSS Ka and Ku

²⁴ Pegasus Petition at 6.

²⁵ *Id.*

band spectrum, reverse band BSS spectrum at 17 GHz, and access to Canadian capacity at the 82° W.L. and 91° W.L. orbital positions. Moreover, as the Commission is aware (because it is in possession of the operative agreements), nothing in DIRECTV's arrangements with Telesat precludes Pegasus from accessing any of the Canadian-allocated BSS frequencies at the 82° W.L. or 91° W.L. orbital positions, or Telesat's Nimiq satellites located at those locations.²⁷

Nor is Pegasus a "foreclosed potential competitor" here. Rather, it was one of two other applicants competing directly with Telesat for authorization from Industry Canada to develop the 72.5° W.L. location.²⁸ No party precluded Pegasus from putting its best foot forward to compete fairly for direct access to the orbital spectrum at 72.5° W.L.. Presumably, Pegasus lost out to Telesat because its proposal was inferior. Furthermore, the *only* reason that the 72.5° W.L. orbital position now will become a "licensed high-power-full CONUS orbital location"²⁹ is because DIRECTV – and not Pegasus – has been able to provide the in-orbit satellite resources to help Telesat and Canada to preserve that location's ability to serve Canada and the United

²⁶ Pegasus holds Ka band authorizations at 73° W.L., 79° W.L., 87° W.L., and 107° W.L.

²⁷ There is a restriction in the Satellite Lease and Relocation Agreement executed between DIRECTV and Telesat that is intended to ensure that the DIRECTV 3 spacecraft is utilized only for Canadian service, *see* Letter to Marlene Dortch, Secretary, FCC, from James H. Barker, Counsel for DIRECTV (Feb. 19, 2004), but there is no restriction that would preclude a party like Pegasus from striking its own arrangement with Telesat to access Canadian capacity via the Nimiq satellites or other spacecraft.

²⁸ The heavily redacted version of Pegasus's application is attached as Exhibit A. DIRECTV invites the Commission to reconcile Pegasus's oft-repeated complaints regarding DIRECTV's requests for confidential treatment of its proprietary documents and filings with Pegasus's evident desire to keep from public disclosure its own confidential information.

²⁹ Pegasus Petition at 1.

States, as well as a plan that will offer tremendous and real benefits to U.S. consumers by year-end.

Pegasus's musings as a disgruntled competitor should not distract the Commission from moving forward promptly to approve DIRECTV's arrangements with Telesat. DIRECTV has (i) found a path to offer increased MVPD competition and local channel service to U.S. consumers and (ii) without utilizing any additional U.S. orbital spectrum resources or foreclosing the use of other existing non-U.S. resources by MVPD competitors. At the same time, it will pro-actively assist Telesat in developing additional Canadian BSS spectrum that can be used for Canadian and U.S. service.³⁰ It is difficult to imagine a more compelling public interest showing.

III. THERE IS NO LOGICAL OR POLICY REASON FOR THE COMMISSION TO LINK DIRECTV'S STA REQUEST TO A RULEMAKING PROCEEDING ON REDUCED ORBITAL SPACING

EchoStar states that it is generally supportive of "broader access to the United States from non-U.S. DBS orbital locations,"³¹ but asks the Commission to defer action on DIRECTV's applications and instead to evaluate this general issue in conjunction with a rulemaking

³⁰ Pegasus argues that "there are other ways to provide such services that do not require the use of prime orbital resources by incumbent DBS operators." Pegasus Petition at 5. While it is true that various frequency bands and alternatives are being explored by U.S. DBS operators to expand their services, such alternatives are years away from commercial deployment or would require expensive and sub-optimal hardware accommodations. Given the availability of a slot and an in-orbit DBS satellite ready to use it, existing full-CONUS BSS spectrum is certainly the most logical and expeditious option in the near term to use for the offering of additional local channel service.

³¹ Comments of EchoStar at 1.

proceeding on reduced orbital spacing, which the Commission is exploring in a separate round of comment.³²

DIRECTV has already agreed with EchoStar that it may be appropriate for the Commission to raise the general subject of U.S. market access as an issue for comment in a rulemaking proceeding that addresses reduced orbital spacing,³³ since it is the proposals of foreign administrations invoking the ITU BSS Plan modification process at orbital locations near operating DBS satellites that have, by and large, given rise to the present need for the Commission to consider its overall orbital spacing policy and operational parameters that will govern twener satellites and their possible co-existence with U.S.-licensed spacecraft. However, EchoStar's efforts to link issues associated with the possible implementation of reduced orbital spacing for U.S. DBS satellites to DIRECTV's current arrangement with Telesat relating to the 72.5° W.L. orbital position (spaced 11 degrees from the nearest operating DBS satellite) are specious and transparent.

Canada's 72.5° W.L. orbital position is not related to "twener sat" issues; it is an existing nine-degree-spaced Canadian assignment in the ITU Region 2 BSS Plan that was modified by Canada to add coverage of the United States. EchoStar's suggestion that reduced orbital spacing questions are implicated because the 72.5° W.L. location is 4.5 degrees away from a Mexican BSS Plan modification at 77° W.L.³⁴ is a red herring. Mexico did not comment

³² *Public Notice*, International Bureau Seeks Comment on Proposals to Permit Orbital Spacings Between U.S. Direct Broadcast Satellites, Report No. SPB-196 (rel. Dec. 16, 2003).

³³ Reply Comments of DIRECTV, Inc., Report No. SPB-196 (Feb. 13, 2004), at 21.

³⁴ Comments of EchoStar at 10.

on Canada's U.S.-coverage modification at 72.5° W.L. in accordance with Article 4 of the ITU Radio Regulations, and therefore "is deemed to have agreed to the proposed assignment."³⁵ Canada is free to bring this assignment into use and agreement from Mexico is not required. This is the converse of the reduced 4.5-degree orbital spacing scenario referenced by EchoStar where every twener satellite filed to date interferes with adjacent nine-degree-spaced satellites and thus requires the agreement of the affected administrations.

From a timing standpoint, EchoStar is well aware that DIRECTV has undertaken a commitment to expand its local channel service to 130 DMAs by the end of 2004, which will result in increased MVPD competition both to incumbent cable operators and to EchoStar, and also knows that DIRECTV plans to meet this commitment through this STA request and related earth station applications. EchoStar thus is attempting to tie DIRECTV's arrangement with Telesat to a rulemaking proceeding in an obvious bid to delay or hamstring its implementation, regardless of the public interest.

The Commission should not countenance such efforts. The agency has already crossed the bridge in its *DBAC Order* of determining that important public interest justifications – here the dual policy goals of increasing localism and competition in the MVPD marketplace, as well as promoting mutual assistance with Canada – can warrant the approval of U.S. service from a Canadian orbital position.³⁶ Moreover, EchoStar's assertion that there will be a risk of

³⁵ ITU Radio Regulations, § 4.2.14.

³⁶ EchoStar also contends that a rulemaking is required to define the "compelling reasons" that could justify allowing service from a foreign-licensed satellite whose home market does not pass the ECO-Sat test. *See* Comments of EchoStar at 8. However, such decisions are of necessity intensely fact-based determinations that are better suited to consideration as they arise rather than by a blanket rule. *See, e.g., SEC v. Chenery*, 332

competitive distortion if the Commission “allow[s] one DBS operator to use a non-U.S. DBS orbital location even as the requests of other operators for additional spectrum remain pending”³⁷ strains logic and credulity. Virtually all current and potential U.S. DBS operators, EchoStar and Rainbow included, are pursuing strategies to increase their authorized bandwidth and satellite capacity in order to improve customer service and offer more customer choice in a U.S. MVPD marketplace that continues to be dominated by incumbent cable operators. Holding hostage license applications intended to achieve these goals serves no pro-competitive purpose. To the contrary, “competitive distortion” will arise from delaying DIRECTV’s efforts to innovate and expand its service in a manner that the Commission already has acknowledged will provide immense competitive and consumer benefits.

IV. CONCLUSION

DIRECTV urges the Commission to grant promptly the requested STA and associated earth station applications as in the public interest.

U.S. 194, 203 (1947) (rulemaking not appropriate where “the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule”). The Commission’s *DISCO II* approach of considering “countervailing public interest factors” in connection with a particular ECO-Sat analysis is by its nature a case-specific inquiry. *See DBAC Order* at ¶ 15.

³⁷ Comments of EchoStar at 9.

Respectfully submitted,

DIRECTV ENTERPRISES, LLC

By: 

Gary M. Epstein

James H. Barker

LATHAM & WATKINS LLP

555 Eleventh Street, N.W.

Washington, D.C. 20005

Phone: (202) 637-2200

Counsel for DIRECTV Enterprises, LLC

March 3, 2004

EXHIBIT A



PEGASUS DEVELOPMENT CORPORATION

**RESPONSE TO INDUSTRY CANADA'S CALL FOR
EXPRESSIONS OF INTEREST IN BROADCASTING SATELLITE
ORBITAL POSITIONS (DGRB-002-03)**

September 15, 2003

ABRIDGED VERSION



Table of Contents

1.	OVERVIEW	1
2.	COMPANY BACKGROUND	1
2.1	OUR EXPERTISE	1
2.2	CORPORATE STRUCTURE	2
2.3	CONTACT INFORMATION	3
3.	SYSTEM OVERVIEW	3
3.1	#.....	4
3.2	#.....	5
	3.2.1 #.....	5
	3.2.2 #s.....	5
	3.2.3 #.....	6
	3.2.4 #.....	6
3.3	#.....	6
3.4	#.....	7
	3.4.1 #.....	7
	3.4.2 #.....	7
3.5	#.....	8
3.6	#.....	8
	3.6.1 #.....	8
	3.6.2 #.....	9
	3.6.3 #.....	9
3.7	#.....	11
4.	#.....	12
4.1	#.....	12
4.2	#.....	12
5.	OTHER OPERATIONAL CONSIDERATIONS.....	13
6.	ELIGIBILITY	14
7.	BENEFITS TO THE CANADIAN BROADCASTING SYSTEM.....	15
8.	CONCLUSION	17

1. OVERVIEW

Pegasus Development Corp. ("PDC") is pleased to submit the following Expression of Interest ("EOI") in response to Industry Canada's *Call for Interest in Broadcasting Satellite Orbital Positions*, Notice No. DGRB-002-03 (the "Notice"), dated July 9, 2003. The proposal set out in this EOI provides an overview of PDC's proposed

#

#

#

The proposed satellite system would provide substantial

#

#

services. The power and flexibility of the satellite system design will

#

#

#

#

#

#

#

#

2. COMPANY BACKGROUND

2.1 Our Expertise

Pegasus Communications Corporation ("Pegasus"), the parent company of PDC, is the only publicly traded broadcast, satellite TV, and Internet services company in the United States that is focused exclusively on providing services to rural and underserved areas.

Pegasus was founded by Marshall W. Pagon during the 1991 recession with the purchase of a portfolio of small cable systems located in rural New England. In 1994, Pegasus entered the DBS business in the United States through the purchase of exclusive rights to sell the DirecTV Direct-To-Home ("DTH") satellite service in the U.S. In 1996, subsequent to a successful initial public offering, Pegasus began a five year process of acquiring additional DirecTV rural franchises.

Today, Pegasus holds exclusive rights to provide digital multi-channel video DTH services via the DirecTV platform to 7.5 million households in 41 U.S. states. Overall, this represents 80% of the exclusive territories held by DirecTV's rural affiliates in the United States.

Pegasus also owns or programs several network affiliated television stations serving over 1.6 million TV households in smaller markets. The Company's 2002 revenue from all services exceeded \$800 million and it currently has over 1000 employees. Pegasus is ranked as the 11th largest multi-channel video provider in the United States, and has the capacity to handle over 800,000 customer service calls per month from four different call centers.

Pegasus' satellite television service has the highest penetration rate of any major DTH service provider in the U.S. or Canada, reflecting the close attention it pays to building and optimizing its rural distribution network and providing outstanding customer service. With an entrepreneurial culture, a focus on underserved and rural markets, strict financial discipline and careful execution, Pegasus has been one of the fastest growing media companies in North America during the last decade.

2.2 Corporate Structure

PDC is the sponsor of this EOI and the # # #. PDC is a Delaware corporation which is wholly owned by Pegasus Communications Corporation. Pegasus is a public company which is ultimately controlled by Marshall W. Pagon. Attached as Exhibit 1 to this submission are the latest annual and quarterly reports of Pegasus to the United

States Securities and Exchange Commission. These reports provide detailed information regarding Pegasus' ownership structure and operations in the United States.

2.3 Contact Information

All correspondence and communications regarding this EOI may be directed to the attention of John K. Hane at the following coordinates:

John Keitt Hane III
Senior Vice President
Pegasus Development Corp. and
Pegasus Communications Corporation
225 City Line Avenue
Suite 200
Bala Cynwyd, PA 19004

Tel – (610) 934-7371
Fax – (610) 934-7072
Email – john.hane@pgtv.com

3. SYSTEM OVERVIEW

The proposal contained in this EOI contemplates the # #

#

The proposed space system will provide a range of # #

#

#

#

3.1 #
 #

#

#

#

#

#

#

##

#

#

#

#

#

3.2 #

3.2.1 #

#

#

#

#

#

#

#

3.2.2 #

#

#

#

#

#

#

#

#

#

#

and can be adapted as necessary as described in Section 4 below.

3.2.3 #

#

#

#

3.2.4 #

#

#

within Canada.

3.3 #

The following table summarizes # # #

#

#	#
#	#
#	#
#	#
#	#

#	#
#	#
#	#
#	#
#	#
#	#
#	#
#	#
#	#

3.4 #

3.4.1 #

#

#

#

#

#

3.4.2 #

#

#

#

#

#

as described in Section 4 below.

3.5 #

#

3.6 #
The # plan is defined as follows:

	#	#	#	#
#	#	#	#	#
#	#	#	#	#

3.6.1 #

The following table illustrates the # #

#	#
#	#

#	#	#
#	#	#
#	#	#
#	#	#
#	#	#
#	#	#
#	#	#

##

#

#

#

3.6.2 #

#

#

#

#

#

#

#

3.6.3 #

3.6.3.1

#

#

#

#

3.6.3.2

#

#

#

#

#

#

#

#

#

#

#

Figure 2 - #

#

3.7 #

#

#

#

#

#

#

#

#

4. #

4.1 #

As described in Section 3.4.2, the proposed #

#

#

#

#

#

#

#

#

#

#

#

#

4.2 #

#

#

#

#

#

#

#

#

#

#

#

#

5. OTHER OPERATIONAL CONSIDERATIONS

Pegasus has long believed that #

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

6. ELIGIBILITY

The opportunity to #

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

To this end, #

#

#

#

#

#

#

#

#

#

#

#

#

#

#

#

7. BENEFITS TO THE CANADIAN BROADCASTING SYSTEM

As indicated above, the #

#

Specifically, PDC's proposal will:

- #;

- #;

- #;

- # ; and

- #.

In addition to these benefits, #

#

Specifically, #:

- #

- # ; and

- #

8. CONCLUSION

PDC is excited about the opportunities that are presented by #

#

#

The proposal contained in this EOI demonstrates the #

#

#

services. The power and flexibility of the satellite system design will

#

#

#

PDC and Pegasus stand ready to #

#

#

#

In the meantime, PDC and Pegasus wish to thank the Department for the opportunity to submit this expression of interest and to participate in the process initiated by DGRB-002-03.

Respectfully submitted,



John Keitt Hane III
Senior Vice President
Pegasus Development Corp.
and
Pegasus Communications Corporation

EXHIBIT 1

Annual and Quarterly Reports for Pegasus Communications Corporation

CERTIFICATE OF SERVICE

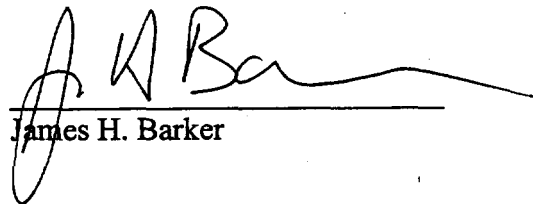
I, James H. Barker, certify that on this 3rd day of March, 2004, a copy of the foregoing Opposition and Reply Comments of DIRECTV Enterprises, LLC was sent by hand-delivery to the following parties:

Benjamin J. Griffin
Christopher R. Bjornson
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Phillip L. Spector
Diane C. Gaylor
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036

Pantelis Michalopoulos
Philip L. Malet
Rhonda M. Bolton
Todd B. Lantor
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795

Bruce D. Jacobs
Tony Lin
Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037



James H. Barker

EXHIBIT B

April 28, 2004

Jack Richards
(202) 434-4210
richards@khlaw.com

Via Hand Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation*

**In The Matter Of DIRECTV Enterprises, LLC Request For Special
Temporary Authority To Relocate DIRECTV 5 To 72.5° WL and to Conduct
Telemetry, Tracking and Command (TT&C) Operations For an Interim
Period, SAT-STA-20040107-00002**

Dear Ms. Dortch:

The National Rural Telecommunications Cooperative (NRTC), by its attorneys, hereby submits these comments in support of the above-captioned request by DIRECTV Enterprises, LLC (DIRECTV) for Special Temporary Authority (STA) to relocate DIRECTV 5 to 72.5° W.L. (*DIRECTV STA*). Grant of the *DIRECTV STA* will help to achieve one of the Commission's primary goals: increased deployment of local broadcast signals to rural areas.

I. BACKGROUND.

Pursuant to a contractual agreement with Telesat Canada (Telesat), DIRECTV has agreed, subject to approval by the Commission, to make its DIRECTV 5 satellite available for Telesat to develop the BSS orbital position at 72.5° W.L. assigned to Canada by the International Telecommunications Union (ITU).¹ In conjunction with the pending launch of DIRECTV 7S, the proposed arrangement will enable DIRECTV to dramatically increase the number of markets receiving local broadcast signals via Direct Broadcast Satellite (DBS).

¹ *DIRECTV STA*, p. 2. Telesat recently was granted approval from Industry Canada, the Canadian spectrum licensing authority, to develop and operate a BSS space station at Canada's BSS orbital position at 72.5 W.L. See Letter to Mr. Ted Ignacy, Vice President-Finance and Treasurer, Telesat Canada, from Jan Skora, Director General, Radiocommunications and Broadcasting Regulatory Branch, Industry Canada (December 17, 2003).

KELLER AND HECKMAN LLP

Serving Business through Law and Science®

Under the agreement, DIRECTV 5 will be positioned at the 72.5° WL orbital location and become operational through an Industry Canada authorization.² DIRECTV 5 essentially will become a “Canadian-flagged” satellite, although title to and ownership of the satellite will remain with DIRECTV.³

After an interim period, Telesat will assume TT&C for DIRECTV 5.⁴ DIRECTV, however, would retain the use of the transponder capacity at that location to provide DBS service to the United States, thus providing access to additional DBS channel capacity necessary for the deployment of additional local broadcast signals.⁵

The *DIRECTV STA* was placed on public notice on January 15, 2004.⁶ Only two parties filed comments opposing the *DIRECTV STA*: Pegasus Development Corporation (Pegasus) and EchoStar Satellite LLC (EchoStar).⁷ Telesat filed comments in support of the *DIRECTV STA*. NRTC is pleased to express its support, as well.

II. NRTC

NRTC is a not-for-profit cooperative comprised of 736 rural electric cooperatives, 147 rural telephone cooperatives and 203 independent rural telephone companies located throughout 48 States. Since its founding in 1986, NRTC’s mission has been to provide advanced technologies and telecommunications services to rural America. NRTC has long represented the views of rural Americans before the FCC, the National Telecommunications and Information Agency and the United States Congress.

In 1994, NRTC assisted in capitalizing the launch of the DIRECTV satellite business. Through a Distribution Agreement between NRTC and Hughes Communications Galaxy, Inc.

² *DIRECTV STA*, p. 4.

³ *Id.* at 2, 4, n.8.

⁴ *Id.* at 2. According to DIRECTV, “[o]nce DIRECTV 5 is positioned at 72.5° W.L., upon receipt of all necessary U.S. and Canadian regulatory approvals, DIRECTV expects to return to the Commission its space station license for DIRECTV 5... DIRECTV would then re-apply for a license for that satellite to provide service using a U.S. orbital location if that becomes necessary in the future... DIRECTV 5 would be located in the center of the cluster at 72.5° W.L. with its exact position to be determined once the satellite is relocated.” See *Id.* at 2, nn. 3, 4.

⁵ *Id.* at 4.

⁶ See Federal Communications Commission Report No. SAT-00187, *Satellite Space Applications Accepted for Filing*, SAT-STA-20040107-00002 (released January 15, 2004).

⁷ See Petition to Deny of Pegasus Development Corporation, submitted in response to the *DTV STA* (submitted February 17, 2004) (*Pegasus Petition*); Comments of EchoStar Satellite, LLC, submitted in response to the *DTV STA* (submitted February 17, 2004) (*EchoStar Comments*). DIRECTV responded to the *Pegasus Petition* and *EchoStar Comments*. See Opposition and Reply Comments of DIRECTV Enterprises, LLC, (submitted March 3, 2004) (*DIRECTV Opposition*).

(DIRECTV's predecessor-in-interest), NRTC received exclusive program distribution and other rights to market DIRECTV's DBS programming and other services throughout much of rural America. NRTC, its members and affiliates currently distribute DIRECTV programming to more than 1,500,000 rural households.⁸

III. COMMENTS.

A. The Commission's Expeditious Grant of DIRECTV's STA Will Ensure Increased Deployment of Local Broadcast Signals to Rural America.

The availability of local broadcast signals in rural communities is not just about the delivery of entertainment programming. To the contrary, access to local news and public affairs programming is an issue of critical importance to the safety, health and economic viability of each and every local community in the country, especially those in rural America with fewer media outlets.

In any natural disaster situation, local news provides vital information on safety procedures, emergency shelter locations, and how to obtain much-needed assistance. In recognition of this fact, as part of its homeland security efforts, the Commission created the Media Security and Reliability Council to address concerns regarding multichannel video programming distribution (MVPD) and broadcast capabilities "during terrorist attacks, natural disasters and all other threats or attacks nationwide."⁹ Access to local broadcast signals is a key component of that effort.

⁸ NRTC also provides dial-up Internet access, 220 MHz wireless services, long distance telephone services, automated meter reading and other telecommunications services to its members and affiliates who in turn provide these services to rural consumers. Additionally, during the past few years, NRTC has facilitated the deployment of broadband services in rural America, by supporting and serving its members who utilize wireline (DSL, cable modem) and wireless (terrestrial and satellite) technologies. NRTC provisions its members as Internet Service Providers and distributes broadband Internet access services via Ku-band satellite pursuant to agreements with StarBand Communications, Inc. and Hughes Network Systems. NRTC and its members also are testing the feasibility of broadband delivery via electric power lines. NRTC recently joined Liberty Satellite, LLC and Intelsat USA Sales Corporation in investing \$156 million (NRTC itself invested \$29 million) in WildBlue Communications, Inc. (WildBlue), a Ka-band satellite licensee. WildBlue is expected to begin offering the first viable Ka-band satellite service in 2004, using technology designed to lower the cost of providing consumers throughout the country with bundled video and high-speed Internet access via satellite.

⁹ Media Security and Reliability Council website, *Are We Ready* <<http://www.mediasecurity.org/>> (visited April 23, 2004). The Media Security and Reliability Council was created to assure the optimal reliability, robustness and security of the broadcast and multichannel video programming distribution industries. See FCC Press Release, FCC Announces Creation Of Media Security & Reliability Council; Tribune Company President Dennis Fitzsimons To Be Chairman (released February 28, 2002).

KELLER AND HECKMAN LLP

Serving Business through Law and Science®

The coverage of news, sports, community affairs and other local events is essential to the social and economic well being of any local community.¹⁰ On numerous occasions, the Commission has stressed the importance of promoting localism through increased deployment of local broadcast signals.¹¹ Recently, the Commission acknowledged the “important public interest benefit of increased local channel service.”¹² NRTC strongly shares this view and believes that expeditious grant of the *DIRECTV STA* will help to ensure that the Commission achieves this laudable goal.

For many rural Americans, access to local broadcast signals has been -- and continues to be -- problematic. Some rural Americans cannot obtain local over-the-air signals due to distance or terrain shielding issues. Others may lack access to cable systems carrying local signals. Still others may reside in markets where neither DBS provider offers a local signal. Congress deems this problem to be of such importance from a public policy perspective that it passed legislation providing loan guarantees for the sole purpose of expanding deployment of local broadcast signals to underserved and unserved areas.¹³

NRTC believes that expeditious grant of the *DIRECTV STA* is an essential step for increased deployment of local broadcast signals to less densely populated areas. *DIRECTV*’s proposed use of the 72.5° WL Canadian BSS slot represents a timely and appropriate solution to this problem.

¹⁰ Communities without effective local coverage of important events will be severely disadvantaged both in building a sense of community spirit and in attracting and maintaining residents and businesses. Without effective local coverage, communities will be viewed as less desirable places within which to live and do business.

¹¹ In its most recent biennial review, the Commission stated that “localism continues to be an important policy objective. Localism is rooted in Congressional directives to this Commission and has been affirmed as a valid regulatory objective many times by the courts. We hereby reaffirm our commitment to promoting localism in the broadcast media.” Report and Order and Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd. 13620, ¶73 (released July 2, 2003). See also, Memorandum Opinion and Order, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd. 473, ¶333 (released January 14, 2004) (*News Corp. DIRECTV Order*) (stating that the increase in local-into-local service “should benefit consumers through increased choice, lower prices, or both”); Fact Sheet: FCC’s Conditioned Approval of News Corp - *DIRECTV* Merger, p. 1 (released December 19, 2003) (discussing the Commission’s conclusion that “consumers will benefit, and the FCC’s goals of promoting localism and competition will be furthered, by the company increasing the number of markets that can receive local broadcast channels from their satellite TV provider).

¹² See Public Notice, *Subject to Conditions, Commission Approves Transaction Between General Motors Corporation, Hughes Electronics Corporation and The News Corporation Limited*, MB Docket No. 03-124 (released December 19, 2003).

¹³ See, *The Launching Our Communities’ Access to Local Television Act of 2000*, Pub. L. No. 106.553 (2000).

Although a number of other solutions have been discussed for expanding local coverage (e.g. reduced orbital spacing, MVDDS), the reality is that their implementation is years away. DIRECTV's proposed solution, however, will have an immediate and tangible effect on numerous rural communities. For this reason, NRTC urges the Commission to expeditiously grant the *DIRECTV STA*.

B. The Commission's *DBAC Order* Supports Grant of the *DIRECTV STA*.

Both EchoStar and Pegasus oppose Commission approval of the *DIRECTV STA*. Pegasus argues in its Petition to Deny that the *DIRECTV STA* is anti-competitive and violates an alleged Commission policy established in the Commission's *DBAC Order*.¹⁴ EchoStar maintains that due to ambiguities in the *DBAC Order*, a rulemaking proceeding is necessary prior to any grant of the *DIRECTV STA*.

Both Pegasus and EchoStar misinterpret the Commission's *DBAC Order*. Rather than barring a grant, the *DBAC Order* actually supports the *DIRECTV STA*.

In the *DBAC Order*, the Commission relaxed its long-standing restriction on the use of Canadian-licensed BSS satellites, concluding that Digital Broadband Application Corporation (DBAC) should be allowed to access Canadian-licensed BSS satellites from earth-stations licensed in the United States. The Commission concluded that grant of DBAC's application would enhance, rather than distort or harm, competition in the United States for broadband video and data services.¹⁵

To reach this conclusion, the Commission applied its effective competitive opportunities test (ECO-Sat), established in the *DISCO II Order*.¹⁶ The ECO-Sat test is applied in instances involving non-WTO covered services (e.g. DBS) by non-U.S. satellites. It is designed to ensure that entry by the foreign satellite does not distort competition in the U.S. market. Although concluding in the *DBAC Order* that Canada failed the ECO-Sat test, the Commission nonetheless

¹⁴ Order, *In the matter of Digital Broadband Applications Corp. Consolidated Application for Authority to Operate U.S. Earth Stations with a U.S.-Licensed Ku-Band FSS Satellite and Canadian-Licensed Nimiq and Nimiq 2 Satellites to Offer Integrated Two-Way Broadband Video and Data Service Throughout the United States*, 18 FCC Rcd. 9455 (released May 7, 2003).

¹⁵ *DBAC Order*, ¶16.

¹⁶ Report and Order, *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 12 FCC Rcd 24094, ¶98 (released November 26, 1997). Under this test, the Commission examines effective competitive opportunities for U.S.-licensed satellites to serve the home market of the non-U.S. satellite seeking access to the United States. *DISCO II Order*, 12 FCC Rcd at 24136-7, 98. In particular, the Commission examines de jure and de facto barriers to entry for the provision of analogous services, and whether any such barriers would cause competitive distortions in the United States. *DISCO II Order*, 12 FCC Rcd at 24137 (para. 99); see also 47 C.F.R. § 25.137(a). Application of the ECO-Sat test is only one factor in its general public interest analysis framework.

approved DBAC's application after determining that there was a "compelling public interest" to overcome the failure of the ECO-Sat test -- namely, increased competition in the MVPD market.

In its opposition to the *DIRECTV STA*, Pegasus extrapolates beyond the Commission's *DBAC Order*, claiming that it establishes a principle whereby domestic use of Canadian-licensed BSS satellites will be limited to new entrants.¹⁷ The *DBAC Order*, however, establishes no such precedent. Although DBAC's status as a new entrant was noted as a factor considered by the Commission in reaching its conclusion, the *DBAC Order* in no way created the Commission "policy" that Pegasus suggests. Rather, the Commission's analysis reflected the policy framework set forth in the *DISCO II Order*. Under this framework, the Commission may consider a wide range of issues in applying its ECO-sat test, including the impact on competition.¹⁸

The Commission granted authority to DBAC because it believed DBAC's status as a new entrant into the MVPD market constituted a "compelling public interest."¹⁹ Applying the same standard to the *DIRECTV STA*, the Commission should easily find that the provision of local broadcast signals to 130 DMAs constitutes a similarly compelling public interest.²⁰ The Commission itself has recently noted that the increased provision of local broadcast signals into select DMAs benefits consumers through "increased choice, lower prices, or both."²¹ These are the same objectives that would be satisfied through grant of the *DIRECTV STA*.

For its part, EchoStar argues that a rulemaking should be initiated in order to resolve a number of issues it claims exist related to the *DIRECTV STA*. It claims that a rulemaking is needed to ensure "even-handed[]" access to non-U.S. DBS orbital locations. According to EchoStar, a rulemaking is also necessary to establish a requisite public interest for overcoming the lack of reciprocity with Canada. EchoStar even goes so far as to claim that a rulemaking is

¹⁷ *Pegasus Petition*, p. 3.

¹⁸ These issues may include the effect on competition in the United States, spectrum availability and matters relating to national security, law enforcement and trade concerns. *DISCO II Order*, ¶¶30-182.

¹⁹ *DBAC Order*, ¶15 (quoting *DISCO II NPRM*, 11 FCC Rcd at 18192) (emphasis in original).

²⁰ In addition, DIRECTV notes in its Opposition to the *Pegasus Petition* that the Commission's most recent competitive assessment of the MVPD marketplace determined that cable operators continue to dominate the MVPD market with a 75% share. See *DIRECTV Opposition*, pp. 5-6 (referencing Tenth Annual Report, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 03-172 (released Jan. 28, 2004), at ¶¶ 4, 124. DIRECTV also notes the Commission's observation that "[W]hile the two primary incumbent DBS competitors have attracted enough subscribers nationwide to rank them among the largest MVPDs, they rank far behind cable operators in most local markets, including all the most populous urban area. Cable remains the predominant provider of MVPD services in these markets." *DIRECTV Opposition*, p. 6 (quoting Memorandum Opinion and Order, *In the Matter of General Motors Corporation and Hughes Electronics Corporation, Transferors And The News Corporation Limited, Transferee, For Authority to Transfer Control*, 19 FCC Rcd. 473, ¶361 (released January 14, 2004) (footnotes omitted) (*News Corp Order*)).

²¹ *News Corp Order* at ¶ 333.

needed to determine the appropriate definition of the Commission's "compelling public interest" standard utilized in the *DBAC Order*.

EchoStar's analysis of the *DBAC Order*, however, ceases at the point where the Commission concludes that Canada failed the ECO-Sat test. EchoStar then claims that in order for the Commission to proceed to the second step -- determining whether a compelling public interest reason warrants grant of the application -- a rulemaking is needed.

EchoStar's demand for a rulemaking proceeding is unwarranted and will only delay the deployment of much needed local broadcast signals to rural Americans. The Commission already has addressed the relevant issues in its *DISCO II Order* and applied them in the *DBAC Order*. There are compelling public interest reasons (*i.e.*, significantly increased local television service) fully justifying grant of the *DIRECTV STA* under the *DISCO II/DBAC* framework.

IV. CONCLUSION.

NRTC urges the Commission to grant the *DIRECTV STA* as quickly as possible. The *DIRECTV STA* will serve the public interest and enable the Commission to achieve one of its primary public interest goals: ensuring that more Americans -- many of whom are located in rural areas -- have access to their local broadcast signals.

Sincerely,

Handwritten signature of Jack Richards and Kevin Rupy, with initials 'KR' at the end.

Jack Richards
Kevin Rupy

Certificate of Service

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 28th day of April, 2004, a true and correct copy of the foregoing correspondence of the National Rural Telecommunications Cooperative in the matter of DIRECTV Enterprises, LLC Request For Special Temporary Authority To Relocate DIRECTV 5 To 72.5° WL, SAT-STA-20040107-00002, was submitted via hand delivery to the Federal Communications Commission, and served via electronic mail and First Class Mail upon the following:

Served via Electronic Mail:

Donald Abelson
Chief, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Tom Tycz
Chief
Satellite and Radiocommunications
Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Jennifer Gilsenan
Chief
Satellite Policy Branch
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor

Fern Jarmulnek
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Rosalee Chiara
Satellite and Radiocommunications
Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

Served via Electronic Mail:

Anna M. Gomez
Deputy Bureau Chief, International
Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Cassandra Thomas
Deputy Chief
Satellite and Radiocommunications
Division, International Bureau
Federal Communications Commission
445 Twelfth Street, S.W., 6th Floor
Washington, D.C. 20554

JoAnn Lucanik
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 6-C416
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

Served First Class Mail:

Pantelis Michalopoulos
Philip L. Malet
Rhonda M. Bolton
Todd B. Lantor
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036-1795
Counsel for EchoStar Satellite, LLC

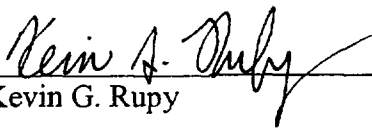
Benjamin J. Griffin
Christopher R. Bjornson
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Counsel for Rainbow DBS Company LLC

Phillip L. Spector
Diane C. Gaylor
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036
Counsel for SES AMERICOM, Inc.

Served First Class Mail:

Bruce D. Jacobs
Tony Lin
Shaw Pittman LLP
2300 N Street, NW
Washington, D.C. 20037
*Counsel for Pegasus Development
Corporation*

Gary M. Epstein
James H. Barker
Latham & Watkins LLP
555 Eleventh Street, N.W.
Washington, D.C. 20005
*Counsel for Hughes Communications,
Inc.*



Kevin G. Rupy