

STAR

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

MAY - 6 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
DIRECTV Enterprises, LLC )  
 )  
Blanket Receive Only Earth Station )  
Application to Provide DBS Service in the )  
U.S. Market from the Canadian BSS )  
Position at 72.5° W.L. )

File No. SAT-LFS-20040112-00023  
Call Sign E040024

REPLY COMMENTS OF SES AMERICOM, INC.

SES AMERICOM, Inc. ("SES AMERICOM"), by its attorneys, hereby replies to the comments of EchoStar Satellite L.L.C. ("EchoStar"),<sup>1</sup> filed in response to the above-captioned application of DIRECTV Enterprises, LLC ("DIRECTV"), to provide Direct Broadcast Satellite ("DBS") service in the U.S. market using the DIRECTV 5 satellite operating from the 72.5° W.L. orbital location (the "DIRECTV Application").<sup>2</sup> This location for broadcasting-satellite service ("BSS") is assigned to Canada under the International Telecommunication Union Plans for the BSS.<sup>3</sup>

In previous filings with the Commission, EchoStar has argued that the Commission should initiate a rulemaking to address the appropriate standards for DBS

<sup>1</sup> Comments of EchoStar Satellite, L.L.C., File No. SAT-LFS-20040112-00023, April 26, 2004 (the "EchoStar Comments").

<sup>2</sup> See *Public Notice*, Report No. SES-00590, March 25, 2004. This proceeding is related to the application of DIRECTV for special temporary authority ("STA") to move the DIRECTV 5 satellite to the 72.5° W.L. orbital position (the "DIRECTV STA Application"). See *Petition to Defer and Comments of SES AMERICOM, Inc.*, File No. SAT-STA-20040107-00002, February 17, 2004.

<sup>3</sup> SES AMERICOM takes no position on the merits of the DIRECTV Application.

providers to access the U.S. market via non-U.S. DBS orbital slots.<sup>4</sup> In the instant comments, EchoStar again argues that a rulemaking should be conducted to address issues raised by the DIRECTV Application.<sup>5</sup>

As SES AMERICOM has explained in previous filings,<sup>6</sup> EchoStar's request for a rulemaking is perplexing. The Commission long ago decided how it would analyze requests to access the U.S. DBS market from foreign-licensed orbital slots.<sup>7</sup> EchoStar has not suggested, nor has any other party, that the "effective competitive opportunities" test ("ECO-Sat") applicable to non-U.S. DBS slots should be reexamined, or that it does not adequately address all U.S. policy concerns relating to the provision of U.S. DBS services from slots licensed by foreign countries, at least for those countries that meet the ECO-Sat test. For countries that do not meet the reciprocity requirements of ECO-Sat, the Commission has chosen to evaluate the specific facts of each proposal on a case-by-case basis.<sup>8</sup> Therefore, there is no need for a rulemaking on DBS service to the United States from non-U.S. licensed slots.

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<sup>4</sup> See, e.g., Comments of EchoStar Satellite L.L.C., File No. SAT-STA-20040107-00002, February 17, 2004 ("EchoStar STA Comments") at 5; Reply Comments of EchoStar Satellite L.L.C., File No. SAT-STA-20040107-00002, March 10, 2004 ("EchoStar STA Reply Comments") at 2; Comments of EchoStar Satellite L.L.C., File Nos. SAT-STA-20030903-00300, SAT-STA-20040107-00002, April 5, 2004, redacted for public inspection ("EchoStar Protective Order Comments") at 2.

<sup>5</sup> EchoStar Comments at 2-3.

<sup>6</sup> See, e.g., Reply Comments of SES AMERICOM, File No. SAT-STA-20040107-00002, March 10, 2004 ("SES AMERICOM STA Reply Comments") at 3; Reply Comments of SES AMERICOM, File Nos. SAT-STA-20030903-00300; SAT-STA-20040107-00002, April 12, 2004 ("SES AMERICOM Protective Order Reply Comments") at 2-3.

<sup>7</sup> 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, *Report and Order*, 12 FCC Rcd 24094, 24099 (1997) ("*DISCO II Order*").

<sup>8</sup> See Digital Broadband Applications, Corp., File No. SES-LIC-20020109-00023, *Order*, DA 03-1526 (Int'l Bur., May 7, 2003); Pegasus Development Corporation,

In its comments, EchoStar points to a number of specific issues raised by the DIRECTV Application, which EchoStar claims should be studied in a rulemaking. First, EchoStar notes that, while the Commission has granted two exceptions to the reciprocity requirements of the ECO-Sat test, in this case, a “public interest exception to the reciprocity requirement would swallow the rule.”<sup>9</sup> EchoStar also argues that the fact that DIRECTV has been required to provide expanded local-into-local service as a condition of the News Corp./Hughes merger should not be used as grounds for special treatment.<sup>10</sup> Finally, EchoStar notes the possible impact of the DIRECTV proposal on the future ability to use adjacent Mexican slots for service to the United States.<sup>11</sup>

These are all important considerations, but none requires the Commission to abandon its longstanding approach to market access and to initiate a rulemaking. All can, and should, be considered in the context of the Commission’s existing ECO-Sat framework. Presumably the Commission will have these considerations – *i.e.*, the scope of its prior precedents, the precedential impact of its decision in this case, and the public interest factors weighing both for and against grant – fully in mind in evaluating and acting on DIRECTV’s

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File Nos. SES-LIC-20011121-02186, SES-LIC-20020111-00075, *Order*, DA 04-909 (Int’l Bur., Mar. 31, 2004).

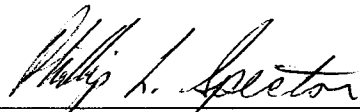
<sup>9</sup> EchoStar Comments at 4. In earlier comments, EchoStar argued that, if the Commission were to authorize DIRECTV to provide service to the U.S. from DIRECTV 5 at 72.5° W.L., it would have little choice but to grant a later request to provide such service from DIRECTV 3 at 82° W.L. EchoStar Protective Order Comments at 4. As SES AMERICOM pointed out in earlier comments -- putting aside the fact that there have been no requests made to the Commission to provide service in the U.S. from DIRECTV 3 at 82° W.L. -- this argument merely points out the obvious: that a decision on service from DIRECTV 5 at 72.5° W.L. may act as precedent in later decisions on future proposals. SES AMERICOM Protective Order Reply Comments at 3.

<sup>10</sup> EchoStar Comments at 2, 7.

<sup>11</sup> *Id.* at 2, 5.

request. As it has in prior cases, the Commission can apply the ECO-Sat test to the facts of the DIRECTV Application without initiating a rulemaking.<sup>12</sup>

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May 6, 2004

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<sup>12</sup> In its comments, EchoStar also reiterates its view that its proposed rulemaking on non-U.S. slots could occur in the context of a rulemaking (if the Commission decides to initiate one) on reduced orbital spacing of DBS satellites. EchoStar Comments at 3, 6; *see also* EchoStar Protective Order Comments at 3; EchoStar STA Comments at 3, 8; *Public Notice*, Report No. SPB-196, December 16, 2003. As SES AMERICOM has explained in prior filings, it is entirely unclear how the issues of DBS orbital spacing and DBS market entry are linked. *See* SES AMERICOM Protective Order Reply Comments at 3, n.10; SES AMERICOM STA Reply Comments at 3-4; Reply Comments of SES AMERICOM, Inc., Report No. SPB-196, February 13, 2004, at 25-26. There have been proposals to offer direct-to-home (“DTH”) service from foreign-licensed satellites that do not involve reduced spacing with respect to U.S. satellites, *see* notes 2 and 8 *supra*, and there have been proposals to offer DTH service from domestic-licensed satellites that do. *See, e.g.*, EchoStar Satellite Corporation, Files Nos. SES-LOA-20030606-00107, SES-LOA-20030605-00109, SES-LOA-20030609-00113. As in its past filings on this issue, EchoStar provides no explanation of how it believes the licensing administration of a satellite impacts consideration of the technical issues of reduced orbital spacing. The Commission should reject EchoStar’s invitation to tie the technical issues of reduced orbital spacing to the policy issues of U.S. market entry by foreign-licensed satellites.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of SES AMERICOM, Inc. was served this 6th day of May, 2004, by First-Class U.S. Mail, postage prepaid, on the following:

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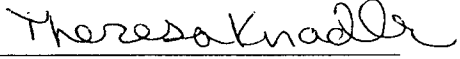
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