



Federal Communications Commission
Washington, D.C. 20554

DA 08-2285

October 10, 2008

Mr. Mark Steel
SWE-DISH Satellite Systems, Inc.
21251 Ridgetop Circle
Suite 120
Sterling, VA 20166

Re: Call Sign: E080208
File No. SES-LIC-20080918-01222

Call Sign: E080209
File No. SES-LIC-20080918-01223

Dear Mr. Steel:

On September 18, 2008, SWE-DISH Satellite Systems, Inc. (SWE-DISH) filed the above captioned applications for authority to operate two temporary-fixed earth stations that will transmit in the 14.0-14.5 GHz frequency band and receive in the 10.95-12.75 GHz frequency bands. For the reasons detailed below, we dismiss those portions of both applications that seek to operate in the 10.95-11.7 and 12.2-12.75 GHz bands as defective without prejudice to refile.¹ Additionally, we request SWE-DISH to provide, by amendment, additional information to allow the Commission to continue to process the remaining portions of the application.²

Section 25.112 of the Commission's rules, 47 C.F.R. § 25.112, requires the Commission to return, as unacceptable for filing, any earth station application that is not substantially complete, contains internal inconsistencies, or does not substantially comply with the Commission's rules. A portion of SWE-DISH's applications are defective, which renders them unacceptable and subject to dismissal. The deficiencies are as follows:

In the applications, SWE-DISH proposes to operate in the 10.95-12.75 and 14.0-14.5 GHz frequency bands and list ALSAT as the point of communication. ALSAT may be listed as the point of communication only when the proposed earth station is both two-degree compliant and operated in the 3700-4200 MHz, 5925-6425 MHz, 11.7-12.2 GHz, and/or the 14.0-14.5 GHz frequency bands. In all other cases, the applicant must identify the specific satellite or satellites

¹ If SWE-DISH refiles an application in which the deficiencies identified in this letter have been corrected and which is otherwise identical to the one dismissed, it need not pay an application fee. *See* 47 C.F.R. § 1.1109(d).

² *See* 47 C.F.R. § 25.111(a).

with which the proposed earth station seeks to communicate.³ Thus, the portions of SWE-DISH's application pertaining to the 10.95-11.7 and 12.2-12.75 GHz frequency bands are defective.

Additionally, SWE-DISH's proposed operations in the 12.2-12.75 GHz band are inconsistent with the U.S. Table of Frequency Allocations, 47 C.F.R. § 2.106. Specifically, the Table of Frequency Allocations limits use of the 12.2-12.7 GHz band to the Broadcast Satellite Service (BSS). SWE-DISH proposes to offer FSS in this band. Further, the U.S. Table limits FSS use of the 12.7-12.75 GHz band to Earth-to-space transmissions only. In its application, however, SWE-DISH states that its earth station would receive downlink transmissions in the 12.7-12.75 GHz band. SWE-DISH did not request a waiver of the Table of Frequency Allocations that would permit non-conforming uses in either the 12.2-12.7 GHz band or the 12.7-12.75 GHz band. Consequently, those portions of SWE-DISH's application requesting authority to operate in these bands are defective.

Furthermore, we note that the 10.95-11.7 GHz and 12.2-12.75 GHz bands are shared on a co-primary basis with the Fixed Service. Section 25.277(f) of the Commission's rules, 47 C.F.R. § 25.277(f), requires that, when the initial location of a temporary-fixed earth station is known, the applicant shall provide, as part of the Form 312 application, a frequency coordination report in accordance with Section 25.203 of the Commission's rules for the initial station location. Alternatively, if the initial location is not known, Section 25.277(f) requires the applicant to provide, as part of the Form 312 application, a statement by the applicant acknowledging its coordination responsibilities under Section 25.277. In response to Question E18 of Schedule B, SWE-DISH indicates that frequency coordination is not required. Therefore, if SWE-DISH chooses to file another application seeking authority to operate a temporary-fixed earth station in the 10.95-11.7 GHz or the 12.2-12.75 GHz band (space-to-Earth), it should either (1) include a frequency coordination report; (2) acknowledge its coordination responsibilities, (3) provide a more detailed explanation of its contention that a frequency coordination report is not required, or (4) include a request for waiver of the coordination requirement in its application.

Last, in response to Question E15 of Schedule B for both applications, SWE-DISH indicates that its proposed DA120 High Power 0.833 meter antenna, model Suitcase CCT120, complies with the antenna gain patterns specified in Section 25.209(a) and (b) of the Commission's rules, 47 C.F.R. § 25.209(a) and (b). The Commission's rules do not require SWE-DISH to submit antenna gain patterns this antenna. Nevertheless, we cannot determine whether the proposed antenna, which is smaller than those routinely authorized, complies with the Commission's rules without these patterns. Section 25.132(a)(1) of the Commission's rules, 47 C.F.R. § 25.132(a)(1), authorizes the Commission to request earth station license applicants to demonstrate compliance with Section 25.209(a) and (b) upon request. Accordingly, pursuant to Section 25.132(a)(1), we request SWE-DISH to demonstrate compliance by submitting the antenna gain patterns for the proposed antenna.

Accordingly, pursuant to Section 25.112(a)(1)⁴ of the Commission's rules, 47 C.F.R. § 25.112(a)(1), and Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261, the 10.95-11.7 and 12.2-12.75 GHz portions of SWE-DISH Satellite Systems, Inc.'s

³ Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Services in the United States, First Order on Reconsideration, IB Docket No. 96-111, 15 FCC Rcd 7207, 7214-16 (paras. 16-20).

⁴ 47 C.F.R. Section 25.112(a)(1). See also Echostar Satellite LLC, *Order on Reconsideration*, DA 04-4056, (released December 27, 2004).

applications are dismissed as defective without prejudice to refiling. Additionally, SWE-DISH must submit the requested information within thirty calendar days from the date of this letter. Failure to submit the requested information will result in dismissal of the remaining portions of the applications pursuant to Section 25.112(c) of the Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Kotler', with a large, sweeping flourish above it.

(FOR) Scott A. Kotler
Chief, Systems Analysis Branch
Satellite Division
International Bureau