

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

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Federal Communications Commission
Office of Secretary

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Policy Branch
International Bureau

File No. SAT-STA-20050321-00068

File No. SAT-MOD-20050513-00103
Call Sign: S2621

File No. SES-MFS-20050527-00662
Call Sign: E020306

_____)
In the Matter of)
)
ECHOSTAR SATELLITE L.L.C.)
)
Application for Special Temporary)
Authority to Move EchoStar 4 to 77° W.L.)
)
Application for Modification)
of Direct Broadcast Satellite Authorization)
To Permit Long-Term Cessation of)
Operations on Three DBS Channels)
At the 157° W.L. Orbital Location)
)
Application for Modification of)
Earth Station Authorization to add the)
EchoStar 4 Satellite at 77° W.L. as a)
Point of Communication)
_____)

COMMENTS ON PETITION FOR RECONSIDERATION

DIRECTV Enterprises, LLC (“DIRECTV”) hereby comments on the Petition for Reconsideration filed by EchoStar Satellite L.L.C. (“EchoStar”) in the above referenced proceedings.¹ EchoStar’s basic contention is that the Commission has failed to treat its application in the same manner as an allegedly “similar” application by DIRECTV. As the object of EchoStar’s comparison, DIRECTV feels compelled to address this contention.

As the Commission found in its *Denial Order*,² EchoStar’s original proposal for occupation of a Mexican-licensed Broadcast Satellite Service (“BSS”) slot was markedly and

¹ Petition for Reconsideration, File Nos. SAT-STA-20050321-00068, SAT-MOD-20050513-00103, and SES-MFS-20050527-00662 (filed June 8, 2005)(“Petition”).

² *EchoStar Satellite L.L.C.*, DA 05-1581 (rel. June 3, 2005)(“*Denial Order*”).

materially different from DIRECTV's proposals for operation from two Canadian-licensed BSS slots. And to the extent EchoStar has now modified its proposal to come more into line with the DIRECTV precedent, the Commission should process that modified proposal in the same way that it processed DIRECTV's applications – *i.e.*, assessing both the request for special temporary authorization (“STA”) to relocate the satellite and the application for blanket earth station authorization for service into the U.S. from the foreign-licensed orbital location in a single, consolidated proceeding.

DISCUSSION

I. THE COMMISSION PROPERLY FOUND THAT ECHOSTAR'S ORIGINAL PROPOSAL WAS VERY DIFFERENT FROM DIRECTV'S PROPOSALS

At the time the *Denial Order* was issued, EchoStar had proposed to relocate its EchoStar 4 satellite to the 77° W.L., but did not propose to provide service into the U.S. from that location. Nor, for that matter, did EchoStar offer any evidence that the satellite would be used to provide service into Mexico from that location. Moreover, as the *Denial Order* noted, a further authorization from the Mexican government would be necessary before such a service could be provided into Mexico.³ From all appearances, then, the sole purpose of EchoStar's request was to conduct very limited operations at 77° W.L. in an effort to perfect the Mexican government's claim to use of that slot under international rules. As the Commission further explained, such considerations are irrelevant to determining the public interest merits of a pending application.⁴

EchoStar asserts that the Commission misapplied its precedent and, as a result, unfairly treated EchoStar less favorably than it had treated DIRECTV in connection with similar

³ See *Denial Order* at ¶ 6.

⁴ *Id.* at ¶ 9.

applications. That assertion is clearly erroneous, because DIRECTV's applications were not remotely similar to EchoStar's.

DIRECTV's proposals involved the use of two Canadian BSS slots by satellites that had been launched by DIRECTV. The first satellite was to be used by a Canadian operator to ensure continuity of service from a location with ongoing satellite operations. While this did not involve any service into the U.S., it did involve actual, authorized service into Canada – service, moreover, that was necessary to avoid disruption to existing Canadian DTH subscribers.

The second satellite was to be used to augment DIRECTV's local-into-local services to the U.S., serving 30 or more additional markets that otherwise would not have had satellite access to their local broadcast stations. That application was accompanied by an application for blanket earth station authorization to allow market access from this foreign-licensed BSS slot. The public interest benefits of such service, DIRECTV believes, are self-evident and were recognized by the Commission as “compelling” in approving DIRECTV's proposal.⁵

Thus, both of DIRECTV's applications involved concrete proposals for immediate service to real subscribers, who otherwise might lose or never gain access to valuable programming. And pursuant to the authorizations granted to DIRECTV, both satellites are providing services to consumers today.

This is a stark contrast to the proposal put forward by EchoStar, which did not involve *any* cognizable service in either Mexico or the U.S. Under the Commission's rules, an STA applicant such as EchoStar must demonstrate “that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of these

⁵ See *DIRECTV Enterprises, LLC*, 19 FCC Rcd. 15529, 15533-34 (Int'l Bur. 2004).

temporary operations would seriously prejudice the public interest.”⁶ DIRECTV’s application made such a showing by demonstrating that the satellites were to be used immediately to take over for an ailing Canadian BSS satellite serving millions of customers and to initiate local service in 30 U.S. markets where local signals otherwise would not have been available. EchoStar’s proposal did not even attempt to make such a showing or to explain any basis for urgency other than meeting Mexico’s bringing into use requirements under ITU rules. In these circumstances, the Commission correctly recognized the distinctions between the STA requests filed by EchoStar and DIRECTV.

II. ECHOSTAR’S NEW PROPOSALS SHOULD BE CONSIDERED IN THE SAME MANNER AS WERE DIRECTV’S PROPOSALS

In its Petition, EchoStar submits two new and additional “facts” that it contends will make its request “indistinguishable” from the STA applications previously filed by DIRECTV.⁷ First, EchoStar asserts its understanding that the Mexican government will promptly grant a pending application that will authorize service to Mexican consumers from EchoStar 4 at 77° W.L.⁸ To date, however, there is no indication that the Mexican government actually has granted such an authorization.⁹

Second, EchoStar states that it has determined that it can also provide service to portions of the U.S. from EchoStar 4 at 77° W.L.¹⁰ EchoStar does not state the basis for this

⁶ 47 C.F.R. § 25.120(b)(1).

⁷ Petition at 2.

⁸ *Id.*

⁹ On June 14, 2005, EchoStar filed a Supplement to Petition for Reconsideration (“Supplement”), which repeats EchoStar’s assertion that QuetzSat Directo will receive a Mexican concession “very soon,” but does not provide any further information. *See* Supplement at 5.

¹⁰ *Id.*

determination, nor any of the particulars of U.S. operations it believes are now feasible.

DIRECTV would note, however, that the antenna gain pattern provided with the Petition is somewhat different – *i.e.*, shifted to the north and east – from the one previously provided by EchoStar.¹¹

In any event, EchoStar's STA request – as amended by its latest Petition and Supplement – still does not provide information with which the Commission and interested parties can adequately assess the potential for harmful interference and other public interest aspects of the proposal. DIRECTV has raised this concern before.¹² EchoStar states that it will file an application shortly for a blanket earth station authorization to provide service to U.S. consumers from this foreign-licensed slot,¹³ which would presumably include detailed information on its proposed operations in the U.S. But it has not yet done so, effectively precluding any meaningful analysis at this point.

EchoStar's proposal for U.S. service is an integral part of the proposal to relocate the satellite to 77° W.L., just as DIRECTV's proposal for U.S. service was an integral part of *its* proposal to relocate DIRECTV 5 to 72.5° W.L. The Commission should, consistent with its treatment of DIRECTV's applications for use of a Canadian BSS slot,¹⁴ process EchoStar's

¹¹ See Letter from Pantelis Michalopoulos to Marlene H. Dortch, Attachment A, FCC File No. SAT-STA-20050321-00068 (dated May 10, 2005). DIRECTV also notes that EchoStar's latest Supplement refers to the antenna pattern submitted on May 10 rather than the diagram submitted with the Petition, *see* Supplement at 5 n.10, which itself was subsequently amended by letter dated June 9, 2005. This inconsistency further demonstrates the need for complete and definitive data on EchoStar's planned operations from 77° W.L., which would be part of EchoStar's market access petition.

¹² See Letter from William M. Wiltshire to Thomas Tycz, FCC File No. SAT-STA-20050321-00068 (May 4, 2005) (expressing concern that EchoStar had not filed sufficient information to enable DIRECTV to analyze potential interference to the operations of its DIRECTV 5 satellite at 72.5° W.L.).

¹³ See Petition at 7 n.9.

¹⁴ *DIRECTV Enterprises*, 19 FCC Rcd. at 25532 (finding that "granting the STA and associated blanket earth station authorization is in the public interest" (emphasis added)).

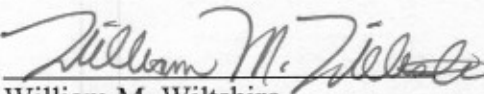
amended STA request as a package with its blanket earth station application if and when such application is filed. Only in this manner would the Commission *truly* be applying “the same basic rules to all similarly situated applicants.”

* * *

Although EchoStar would very much like to analogize its proposals to the applications granted for DIRECTV, a review of the record confirms that the cases are entirely different. To the extent EchoStar and DIRECTV achieved disparate results, it is because they presented the Commission with very different facts and circumstances. Now that EchoStar seeks to provide service in the U.S. from this foreign-licensed orbital location, the Commission should process that request as part and parcel of the request to relocate EchoStar 4 – just as it did when DIRECTV sought to relocate a satellite to provide U.S. service from a non-U.S. BSS slot. Evenhanded treatment requires no less.

Respectfully submitted,

DIRECTV ENTERPRISES, LLC

By: 
William M. Wiltshire
Michael D. Nilsson

HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Washington, DC 20036
202-730-1300


Counsel for DIRECTV Enterprises, LLC

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CERTIFICATE OF SERVICE

I hereby certify that, on this 20th day of June, 2005, a copy of the foregoing
Comments on Petition for Reconsideration was delivered by hand to:

Pantelis Michalopoulos
Philip L. Malet
Brendan Kasper
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036


Jennifer Anselmo