

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

Application of

**NEW DBSD SATELLITE SERVICES G.P.,
DEBTOR-IN-POSSESSION**

File No. SES-MOD- _____

Call Sign: E070272

**APPLICATION FOR MODIFICATION OF
ANCILLARY TERRESTRIAL COMPONENT AUTHORITY**

August 22, 2011

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I. INTRODUCTION AND SUMMARY

New DBSD Satellite Services G.P., Debtor-in-Possession (“DBSD”) seeks the consent of the Federal Communications Commission (“Commission” or “FCC”) for modification of its ancillary terrestrial component (“ATC”) authorization, as necessary, to waive certain rules applicable to ATC service to the extent requested and for the reason set forth herein.¹ DISH Network Corporation (“DISH”), Pendrell Corporation (formerly, ICO Global Communications (Holdings) Limited),² DBSD North America Inc., Debtor-in-Possession, and DBSD (collectively, the “Applicants”) are also filing an amendment to their April 8, 2011, application

¹ In a January 15, 2010 order, the Commission granted New ICO Satellite Services G.P., DBSD’s predecessor-in-interest, blanket authority to operate ATC base stations and its MSS-ATC mobile earth terminals (“METs”) using its S-band MSS spectrum assignment. *See generally* New ICO Satellite Service G.P., Application for Blanket Authority to Operate Ancillary Terrestrial Component Base Stations and Dual-Mode MSS-ATC Mobile Terminals in the 2 GHz MSS Bands, *Order and Authorization*, 24 FCC Rcd. 171 (2009) (“*DBSD ATC Order*”).

² On July 21, 2011, Pendrell Corporation announced that its name change from ICO Global Communications (Holdings) Limited became effective. *See* Press Release, Pendrell, ICO Global Communications Name Change to Pendrell Corporation Becomes Effective (July 21, 2011), *available at* http://www.pendrell.com/_files/Pendrell%20Name%20Change%20-%20CFO%20appointment%20release.pdf. Pursuant to Section 1.65 of the Commission’s rules, the Applicants notify the Commission of this name change. *See* 47 C.F.R. § 1.65.

for the transfer of control of the authorizations held by DBSD to DISH (the “DISH-DBSD Amendment”).³ The Applicants are filing the Amendment to reflect a parallel and complementary transaction proposed in an application also being filed today by TerreStar Networks Inc., Debtor-in-Possession and TerreStar License Inc., Debtor-in-Possession (collectively, “TerreStar”) and DISH (“DISH-TerreStar Application”). Among other things, the Amendment also incorporates the requests made herein, and the DISH-TerreStar Application likewise seeks waivers intended to harmonize the regulatory regime applicable to the two authorizations.

First, consistent with FCC precedent,⁴ DBSD requests a waiver of the integrated service requirement to allow DBSD and DISH to offer dual-mode terminals to all customers who want them, but make single-mode terrestrial terminals available to customers who do not need or desire the satellite function. *Second*, DBSD requests a waiver of the spare satellite requirement. *Finally*, DBSD asks the Commission to clarify that a certain measurement technique will be sufficient to confirm compliance with Section 25.252(a)(1) of the Commission’s rules.

II. WAIVER REQUESTS

A. Waiver Requests and Criteria

To increase its flexibility to be able to fully and efficiently utilize 2 GHz MSS spectrum to provide terrestrial mobile broadband while continuing to provide a robust satellite offering, DBSD requests certain waivers of the ATC rules addressed herein. The Commission may waive its rules for good cause shown, particularly where strict compliance with a rule is inconsistent

³ See Consolidated Application of ICO Global Communications (Holdings) Limited et al. and DISH Network Corporation for Authority to Transfer Control, File Nos. SAT-T/C-20110408-00071, SES-T/C-20110408-00424, SES-T/C-20110408-00425 (filed Apr. 8, 2011) (“DISH-DBSD Application”).

with the public interest when taking “into account considerations of hardship, equity, or more effective implementation of overall policy,”⁵ especially when deviation on an individual basis does not require “evisceration of a rule by waivers.”⁶ The Commission’s grant of these waivers will enable DISH to make commitments regarding its terrestrial mobile broadband network and service deployments. In support of the waivers requested herein, DBSD points to the commitments made by the Applicants in the DISH-DBSD Amendment and hereby incorporates these commitments by reference.

The Commission should act here on the National Broadband Plan’s recommendation that “[t]he FCC should take actions that will optimize licensee flexibility sufficient to increase terrestrial broadband use of MSS spectrum, while preserving market-wide capability to provide unique mission-critical MSS services.”⁷ Grant of these waiver requests will better serve the public interest and the goals of the Commission’s MSS/ATC policy than would strict application of the ATC rules. DBSD emphasizes that it is asking for a waiver of the Commission’s rules in the individual circumstances of this case, in light of DISH’s plan, the availability of the GENUS™ phone and its future iterations, the unique features of the 2 GHz band and its existing licensees, and DISH’s commitment to MSS services, as further described in the DISH-DBSD Amendment. DBSD is not asking for the application of new or different rules for MSS/ATC services.⁸

⁴ See LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component, *Order and Authorization*, 26 FCC Rcd. 566 (2011).

⁵ 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁶ *WAIT Radio*, 418 F.2d at 1159.

⁷ Federal Communications Commission, *Connecting America: The National Broadband Plan*, 87 (2010) (“National Broadband Plan”).

⁸ Compare *WAIT Radio*, 418 F.2d at 1153 (noting that the Commission may grant a waiver of its rules for good cause shown), with *Cities of Anaheim, Riverside, Banning, Colton and Azusa*,

B. “Integrated Service” Requirement

DBSD requests that the Commission waive application of the ATC “integrated service” rule⁹ to permit DBSD and DISH to provide dual-mode terminals to customers who want them, and single-mode terrestrial terminals to customers who do not want the satellite function. Allowing DBSD and DISH to provide single-mode terrestrial terminals to customers who have no need for satellite functions will achieve significant public benefits, and will do so by better serving the important, underlying policy. DBSD and DISH are committed to securing the opportunity to deploy a terrestrial broadband network and will provide substantial satellite service – however, relief from the integration requirement is an important component of the plan.

Because DISH now intends to acquire both DBSD’s and TerreStar’s authorizations, satellites, and facilities, DISH will be able to offer consumers greater choice by continuing to make available the existing dual-mode GENUS™ phone (or a successor device) to customers who want the satellite function, and also make available single-mode devices (terrestrial only) for other customers. Thus, rather than severely restricting consumers’ choice of devices, DISH plans to provide customers with greater choice in devices according to their preferences. Furthermore, DBSD understands that DISH will take steps to ensure that customers are aware that both satellite and integrated, satellite-terrestrial service options are available to them.

Today, a mobile voice and data provider’s ability to attract customers depends in large measure on its ability to provide its customers with the types of devices that best suit their needs. In a world of lighter-and-smaller-is-better, consumers prefer lighter weight handsets with longer battery life. In addition, the requirement to make every device dual-mode severely limits a

California v. FERC, 723 F.2d 656, 659 (9th Cir. 1984) (holding that an agency may not use an adjudication to circumvent the Administrative Procedure Act’s rulemaking procedures, by, for example, amending a rule).

provider's ability to enter into arrangements with multiple device and equipment manufacturers, thereby limiting consumer choice and severely impairing the business case economics.

Such a lack of choice compels consumers to shoulder the associated additional costs, while hampering the service's competitiveness by significantly limiting a provider's ability to attract customers. This does not make sense, particularly against the backdrop of increasing consolidation in the commercial mobile radio service arena, and does not further the Commission's goal of expanding the use of MSS/ATC service nationwide. To the contrary, it disserves the Commission's well-established policy in favor of efficient use of the spectrum.

Waiver of the integrated service rule in these circumstances will better serve the underlying Commission policy of creating a robust MSS service than would strict adherence to it. As noted above, the flexibility sought will allow DISH to acquire the critical mass of MSS/ATC subscribers necessary to create a viable terrestrial service offering. That mass of subscribers, in turn, will allow DISH to support the integrated network upon which its MSS offering also depends, lessening the per-subscriber cost of maintaining the network. In other words, by helping to ensure the viability of the MSS/ATC service through the provision of flexibility, the Commission will also help ensure a viable and substantial MSS service.

In the National Broadband Plan, the Commission rightly observed that its gating criteria had "made it difficult for MSS providers to deploy ancillary terrestrial networks."¹⁰ This militates for flexible application of the integrated service requirement and favorable consideration of this waiver request subject to the safeguards described above.

⁹ See 47 C.F.R. § 25.149(b)(4).

¹⁰ National Broadband Plan at 88.

C. Spare Satellite Requirement

As DBSD and DISH have done in their DISH-DBSD Amendment, DBSD also requests a waiver of the Commission’s spare satellite “gating” requirement.¹¹ Under that rule, an MSS/ATC operator must have a spare satellite available on the ground within one year after commencing ATC operations and launch that satellite in the first commercially reasonable launch window following the failure of an MSS satellite.¹² The Commission adopted the spare satellite rule “to ensure that there would be redundancy of satellite service, while at the same time, retaining ATC operations as an ‘ancillary’ service in the event of launch failures or satellite malfunctions.”¹³

A waiver of the spare satellite requirement in this case will not undermine the purpose of the rule. That purpose is to ensure that MSS operators continue investment and innovation in their satellite systems, and that they move quickly to restore service following a satellite failure.¹⁴ The highest risk of such failure occurs during the first year after launch, which covers the risk areas of launch, deployment, and early life failures. DBSD’s G-1 satellite has passed that risk period, meets its specifications, remains in good health, and is expected to provide uninterrupted service for the rest of its full design life of 15 years. In fact, DBSD’s G-1 satellite has enough propellant on board to last many years beyond the specified life. As a result, the need to launch a replacement satellite before the satellite’s end of life is already only a remote

¹¹ 47 C.F.R. § 25.149(b)(2).

¹² *Id.*

¹³ Mobile Satellite Ventures Subsidiary LLC, Application for Limited Waiver of On-Ground Spare Satellite Rule, *Memorandum Opinion and Order*, 22 FCC Rcd. 20548, 20549 ¶ 4 (2007) (“*MSV Waiver Order*”).

¹⁴ Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd. 1962, 2006 ¶ 81 (2003).

possibility. Moreover, given the significant capacity available as a result of potential interoperabilities between DBSD's G-1 and TerreStar's T-1 satellites, it is likely that any capacity shifting or redeployment that might be needed for business concerns could be accommodated with limited additional support.

As noted above, DISH plans to deploy an MSS/ATC system using the full 40 MHz of S-band spectrum with in-orbit active and spare capacity on DBSD's G-1 satellite (currently positioned at 92.85° W.L.) and TerreStar's T-1 satellite (currently positioned at 111° W.L.). As a result, post-transaction, DISH will have two state-of-the-art satellites in orbit and capable of providing MSS in the S-band over all 50 states, Puerto Rico, and the U.S. Virgin Islands. Given the significant capacity available as a result of potential interoperabilities between DBSD's G-1 and TerreStar's T-1 satellites, it is likely that any capacity shifting or redeployment that might be needed for business concerns could be accommodated with limited additional support.

On the other hand, requiring DISH to complete and earmark two satellites as spares – one for each of DBSD's and TerreStar's authorizations – would be to require expenditure of over half a billion dollars and would serve no discernible policy. Worse, strict compliance with the spare satellite requirement would only serve to divert DISH's resources away from developing its hybrid MSS/ATC network. This is an unnecessary and unreasonable expense that would jeopardize the business case for entering the market in the first place. In particular, it would not increase the reliability of the MSS service to be provided and would, in fact, unnecessarily lengthen any potential service outage. Indeed, as the Commission noted in the *MSV Waiver Order*, launch of a spare satellite may take as long as 18 months,¹⁵ during which time customers would have limited or no service.

¹⁵ *MSV Waiver Order*, 22 FCC Rcd. at 20550 ¶ 8.

This is not a case in which a nascent satellite operator is undertaking its first-ever satellite venture on a shoe-string. Managing a satellite fleet is at the core of DISH’s business. DISH has a long history of building, launching, and operating satellites. DISH currently ensures continued operations of a satellite system relied upon by approximately 14 million households in a market where interruptions of service can be fatal to customer satisfaction. DISH has consistently done so without being subject to a ground spare requirement. This request amounts to no more than allowing DISH the flexibility to do with its MSS satellites what it does on a daily basis with its DBS satellites.

The Commission waived the spare satellite rule in the *MSV Waiver Order* based on a showing that each of the two operational L-band satellites would provide sufficient backup capacity for the other.¹⁶ The Commission concluded that a waiver in that case “will strike an appropriate balance between ensuring continuity of satellite service to customers and minimizing cost burdens on the satellite operator.”¹⁷ A waiver in the present circumstances is equally justified, as strict compliance with the rule would not serve the public interest, and the requested waiver more effectively implements the Commission’s overall policy.

D. Request for Clarification of Section 25.252(a)(1) of the Commission’s Rules

Although the Commission has adopted an out-of-band emission limit for ATC base stations under Section 25.252(a)(1), the measurement technique to be used to measure compliance with the rule is not specifically enumerated. DBSD intends to demonstrate conformance with the base station limit using the same emission measurement technique that the Commission has previously approved to measure compliance with the equivalent requirements

¹⁶ *Id.* at 20550-51 ¶¶ 8, 12.

¹⁷ *Id.* at 20551 ¶ 12.

for handsets in the band.¹⁸ DBSD requests that the Commission clarify that this measurement procedure is acceptable.

III. PROCEDURAL REQUESTS

A. Permit-But-Disclose Status

DBSD asks that the Commission designate the ex parte status of this proceeding as “permit but disclose” under the Commission’s rules. Doing so will facilitate the development of a complete record and is consistent with Commission decisions in similar proceedings.

B. Consolidation Treatment with Amendment and DISH-TerreStar Application

DBSD requests that the Commission consider this modification request jointly with the DISH-TerreStar Application. Because grant of the DISH-DBSD Amendment and Application and consummation of the transaction proposed therein will result in the transfer of this authorization to DISH, the certifications on the FCC Form 312 accompanying this exhibit, Questions 20 to 41 (including Attachments 1 and 2 hereto responding to Questions 36 and 40, respectively) were completed with respect to DISH. Therefore, the response on the instant Form 312 to these Questions are the same as the responses provided on the FCC Form 312s filed with the Commission as part of the DISH-DBSD Application and Amendment.

¹⁸ *DBSD ATC Order*, 24 FCC Rcd. at 195 ¶ 64. Compliance of the $43 + 10 \log P$ rule will be based on use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (i.e., 1 megahertz or 1 percent of emission bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

IV. CONCLUSION

Grant of the requested modification will enhance DBSD's ability to provide a robust and viable MSS/ATC service nationwide. As a result and as further set forth herein, the grant of this application is in the public interest.

Respectfully submitted,

_____/s/_____

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August 22, 2011

ATTACHMENT 1

RESPONSE TO FCC FORM 312, QUESTION 36

This attachment provides details as to any “FCC station authorization or license revoked or . . . any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission,” as requested by FCC Form 312, Question 36, for DISH Network Corporation (with its affiliates DISH Operating L.L.C. (f/k/a EchoStar Satellite Operating L.L.C.) and Gamma Acquisition L.L.C., “DISH”).

In a *Memorandum Opinion and Order* released May 16, 2002, the Satellite Division of the International Bureau cancelled two conditional construction permits held by affiliates of the applicant DISH for 22 channels at the 175° W.L. orbital location.¹

By an *Order* released July 1, 2002, the International Bureau cancelled DISH’s license for a Ka-band satellite system and dismissed a related modification application filed by DISH.² On November 8, 2002, the International Bureau reinstated DISH’s license for a Ka-band system as well as the related modification application.³

In a *Memorandum Opinion and Order* released April 29, 2004, the International Bureau denied, in part, four applications filed by DISH to operate GSO FSS satellites using the Ka and/or Extended Ku-bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. orbital locations.⁴ DISH’s petition for reconsideration of this decision was denied.⁵

In a *Memorandum Opinion and Order* released August 3, 2004, the International Bureau declared null and void the space station authorization held by VisionStar, a DISH affiliate, for use of the Ka-band at the 113° W.L. orbital location.⁶

¹ See EchoStar Satellite Corporation, Directsat Corporation, Direct Broadcasting Satellite Corporation, Consolidated Request for Additional Time to Commence Operation, *Memorandum Opinion and Order*, DA 02-1164 (rel. May 16, 2002).

² See EchoStar Satellite Corporation, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 02-1534 (rel. July 1, 2002).

³ See EchoStar Satellite Corporation, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 02-3085 (rel. Nov. 8, 2002).

⁴ See EchoStar Satellite LLC, Applications for Authority to Construct, Launch, and Operate Geostationary Satellites in the Fixed-Satellite Service Using the Ka and/or Extended Ku Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. orbital locations, *Memorandum Opinion and Order*, DA 04-1167 (rel. Apr. 29, 2004).

⁵ See EchoStar Satellite LLC, Petition for Reconsideration, Applications for Authority to Construct, Launch, and Operate Geostationary Satellites in the Fixed-Satellite Service Using the Ka and/or Extended Ku Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. orbital locations, *Memorandum Opinion and Order*, DA 06-865 (rel. Apr. 14, 2006).

⁶ See VisionStar, Inc., Application for Modification of Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed Satellite Service, *Memorandum Opinion and Order*, DA 04-2449 (rel. Aug. 3, 2004).

By letter dated May 19, 2005, the Satellite Division of the International Bureau denied DISH's applications for a Fleet Management Modification and for a Special Temporary Authority to move the EchoStar 4 satellite to 61.5° W.L., pending the Commission's consideration of another DISH request to move the satellite to 77° W.L., on the grounds that the purpose of the proposed fleet management modification was not consistent with the purposes of the Commission's rules and that there were no extraordinary circumstances for the grant of temporary authority.⁷

In a *Memorandum Opinion and Order* released June 3, 2005, the International Bureau denied DISH's application for a Special Temporary Authority to move the EchoStar 4 satellite to 77° W.L. on the grounds that DISH had failed to establish extraordinary circumstances for the grant of such authority.⁸ However, the International Bureau later granted partial reconsideration of this order and then granted DISH's request to move the satellite to 77° W.L. where it would operate pursuant to Mexican authority.⁹

⁷ See Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, FCC to Pantelis Michalopoulos, Counsel to EchoStar Satellite L.L.C., DA 05-1405 (May 19, 2005).

⁸ See EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations During the Relocation of EchoStar 4 to the 77° W.L. Orbital Location, *Memorandum Opinion and Order*, DA 05-1581 (rel. Jun. 3, 2005).

⁹ See EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations During the Relocation of EchoStar 4 to the 77° W.L. Orbital Location, *Order on Reconsideration*, DA 05-2067 (rel. Jul. 25, 2005); EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations During the Relocation of EchoStar 4 to the 77° W.L. Orbital Location, *Order and Authorization*, DA 06-868 (rel. Apr. 18, 2006).

ATTACHMENT 2

RESPONSE TO FCC FORM 312, QUESTION 40, AND SCHEDULE A, QUESTION A20

This attachment provides details as to the ownership and corporate structure of Gamma Acquisition L.L.C. (“Gamma”) and its parent, DISH Network Corporation (“DISH”).

OWNERSHIP OF DISH AND GAMMA

Gamma is a direct wholly owned subsidiary of DISH. DISH is a publicly traded Nevada corporation. The stockholders owning of record and/or voting 10 percent or more of the voting stock of DISH include:

Ownership Interest	Citizenship	Approx. Equity Interest¹	Approx. Voting Interest¹
Charles W. Ergen ² Chairman DISH Network Corporation 9601 South Meridian Blvd. Englewood, CO 80112	USA	53.3%	90.4%
The Goldman Sachs Group, Inc. ³ 200 West Street New York, NY 10282	USA	10.5%	0.85%

¹ As of July 15, 2011.

² Includes both Class A common stock and Class B common stock ownership. Class B common stock is owned through several trusts. Mr. Ergen is deemed to own beneficially all of the Class A Shares owned by his spouse, Cantey M. Ergen. Mr. Ergen’s beneficial ownership includes: (i) 478,302 Class A Shares; (ii) 19,026 Class A Shares held in the Corporation’s 401(k) Employee Savings Plan (the “401(k) Plan”); (iii) the right to acquire 1,415,000 Class A Shares within 60 days upon the exercise of employee stock options; (iv) 235 Class A Shares held by Mr. Ergen’s spouse; (v) 1,466 Class A Shares held in the 401(k) Plan by Mrs. Ergen; (vi) 20,130 Class A Shares held as custodian for Mr. Ergen’s children; (vii) 27,000 Class A Shares held by a charitable foundation for which Mr. Ergen is an officer and (viii) 234,190,057 Class A Shares issuable upon conversion of Mr. Ergen’s Class B Shares. Mr. Ergen has sole voting and dispositive power with respect to 149,183,340 shares. Mr. Ergen’s beneficial ownership of Class A Shares excludes 4,245,151 Class A Shares issuable upon conversion of Class B Shares held by certain trusts established by Mr. Ergen for the benefit of his family.

³ According to the Form 13F filed by The Goldman Sachs Group, Inc. (along with its affiliates, “Goldman”) with the SEC on August 15, 2011, Goldman held in aggregate 21,821,878 Class A Shares as of June 30, 2011 (the 13F reporting date).

CORPORATE OFFICERS AND DIRECTORS⁴

DISH Network Corporation

Executive Officers:

Joseph P. Clayton	President and Chief Executive Officer
Thomas A. Cullen	Executive Vice President, Corporate Development
Bernard L. Han	Executive Vice President and Chief Operating Officer
Robert E. Olson	Executive Vice President and Chief Financial Officer
R. Stanton Dodge	Executive Vice President, General Counsel and Secretary
W. Erik Carlson	Executive Vice President, DNS and Service Operations
James DeFranco	Executive Vice President and Special Advisor to CEO
Michael Kelly	President, Blockbuster L.L.C.
Roger Lynch	Executive Vice President, Advanced Technologies
Stephen Wood	Executive Vice President, Human Resources

Board of Directors:

Charles W. Ergen	Chairman
Joseph P. Clayton	
Carl E. Vogel	
James DeFranco	
David K. Moskowitz	
Cantey M. Ergen	
Steven R. Goodbarn	
Gary S. Howard	
Tom A. Ortolf	

Gamma Acquisition L.L.C.

Executive Officers:

Charles W. Ergen	Chairman
R. Stanton Dodge	Executive Vice President and General Counsel
James DeFranco	Executive Vice President

⁴The address for all officers and directors of DISH Network Corporation and DISH Operating L.L.C. is 9601 South Meridian Blvd., Englewood, CO 80112.