

## WAIVER REQUEST

DIRECTV Enterprises, LLC (“DIRECTV”) seeks a waiver, to the extent the Commission deems it necessary, of the limitation in 47 C.F.R. § 25.203(l) that earth stations operating in the 17/24 GHz Broadcasting Satellite Service (“BSS”) “may be licensed only in Economic Areas where no existing FS licensee has been authorized.”<sup>1</sup> DIRECTV seeks to operate an earth station in an *area* (Denver) where an FS licensee has been authorized, but on *frequencies* in which that licensee is not authorized. While DIRECTV believes that the rule should not be construed as applying in such circumstances, it requests this waiver out of an abundance of caution.

In this application, DIRECTV seeks to modify its current authorization for a Ka-band earth station (call sign E070027) at its uplink facility in Castle Rock, Colorado, to add frequencies needed to communicate with DIRECTV’s licensed 17/24 GHz BSS satellites that are currently under construction. Specifically, DIRECTV has requested authority to transmit in the 24.75-25.13 GHz band. The lower 300 MHz of this band (*i.e.*, 24.75-25.05 GHz) is allocated solely to 17/24 GHz BSS uplinks, and thus are not at issue in this waiver request. However, the upper portion of this band (*i.e.*, 25.05-25.25) is shared on a co-primary basis with two terrestrial services: the Digital Electronic Messaging Service (“DEMS”) and the 24 GHz Fixed Service (with DEMS, collectively referred to herein as “24 GHz FS”).<sup>2</sup>

DIRECTV’s Castle Rock facility falls within the Denver-Boulder Economic Area (“EA”) used for licensing 24 GHz FS systems. According to the Commission’s electronic database, only two terrestrial licenses in the relevant band have been issued for that area, both to FiberTower Spectrum Holdings LLC (“FiberTower”). The first is a license purchased at auction in 2004 that authorizes operations throughout the EA using the 25.13-25.17 GHz portion of this band.<sup>3</sup> That license remains in force, and will not expire until March 2015. DIRECTV has not sought authority to operate its earth station in this portion of the band.

The second is a DEMS license that authorizes operations in the Denver Standard Metropolitan Statistical Area (“SMSA”) using the 25.09-25.13 GHz portion of this band.<sup>4</sup> The

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<sup>1</sup> 47 C.F.R. § 25.203(l).

<sup>2</sup> *See Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Broadcasting Satellite Service Operating Bi-directionally in the 17.3-17.7 GHz Frequency Band*, 22 FCC Rcd. 8842 (2007) (“BSS R&O”).

<sup>3</sup> *See* Call Sign WQCJ304.

<sup>4</sup> *See* Call Sign WMT329. The Denver SMSA covers a much smaller area than the EA, but includes Douglas County (where Castle Rock is located).

Commission recently found that FiberTower had failed to demonstrate that it had satisfied its substantial service requirement with respect to this license (and many others), and that therefore the license automatically terminated as of June 1, 2012.<sup>5</sup> Accordingly, there is presently no 24GFS licensee in this portion of the band. DIRECTV *does* seek authority to use these frequencies in the instant application.

In the *BSS R&O*, the Commission established procedures for licensing of 17/24 GHz BSS feeder link earth stations, subject to coordination with 24GFS licensees when warranted.<sup>6</sup> In doing so, however, the Commission said that its rules would “presume[] that the earth station’s location is outside of the 24 GHz FS license area,” and further stated that it does not “intend to license 17/24 GHz BSS feeder links to operate in an existing 24 GHz FS license area.”<sup>7</sup> In implementing this decision, Section 25.203(l) states that 17/24 GHz BSS feeder link earth stations operating in the 25.05-25.25 GHz band “may be licensed only in Economic Areas where no existing FS licensee has been authorized.”<sup>8</sup> DIRECTV has asked the Commission to clarify that this rule does not prohibit licensing of 17/24 GHz BSS earth stations in areas licensed to 24 GHz FS operations for frequencies not covered by such terrestrial authorizations.<sup>9</sup> No one opposed this clarification request, but it remains pending.

Accordingly, to the extent necessary, DIRECTV requests a waiver of Section 25.203(l) so that it may operate in the portion of the 25.05-25.25 GHz band that is not currently licensed to FiberTower in the Denver-Boulder EA (*i.e.*, 25.05-25.13 GHz). The Commission may grant a waiver for good cause shown.<sup>10</sup> Grant of this waiver would serve the public interest by allowing this currently fallow spectrum, which is not licensed to any terrestrial user, to be put to productive use in support of DIRECTV’s launch of service to millions of subscribers nationwide in the 17/24 GHz BSS band next year. Without this waiver, DIRECTV would not have sufficient uplink spectrum to match the 400 MHz of downlink spectrum allocated to 17/24 BSS systems for domestic use.<sup>11</sup> Moreover, grant of the waiver would not undermine the purpose of

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<sup>5</sup> See *FiberTower Spectrum Holdings LLC*, 27 FCC Rcd. 13562 (WTB 2012). FiberTower has requested a stay of that order, and has also filed an application for review. See ULS File No. 0005207557 *et al.* Under the Commission’s rules, however, the order remains effective unless and until either stayed or overturned on review. See 47 C.F.R. § 1.102.

<sup>6</sup> See 47 C.F.R. § 25.203(l).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See Petition for Reconsideration of DIRECTV, Inc., IB Docket No. 06-123 (filed Sep. 28, 2007).

<sup>10</sup> 47 C.F.R. § 1.3.

<sup>11</sup> Because DIRECTV’s first 17/24 GHz BSS satellite has a guard band at the upper end of its downlink frequency channels, the 380 MHz of uplink spectrum requested in this application will be sufficient to match the bandwidth of the satellite’s transmissions.

the rule,<sup>12</sup> as FiberTower would retain all the rights and ability to operate in its licensed spectrum throughout the EA that it currently enjoys, since DIRECTV does not seek to use that spectrum.

For the foregoing reasons, DIRECTV requests that the Commission grant the requested waiver, to the extent necessary, and authorize DIRECTV to operate its uplink earth station over the frequencies from 25.05-25.13 GHz.

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<sup>12</sup> See *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (waiver is appropriate where relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest).