

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of
Application of DIRECTV, Inc.
Request For Special Temporary Authority for the
DIRECTV 3 Satellite
File No. SAT-STA-20030903-00300
DBS8402

ORDER

Adopted: June 23, 2004

Released: June 23, 2004

By the Deputy Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant DIRECTV Inc.'s ("DIRECTV") application for Special Temporary Authority ("STA") to relocate its DIRECTV 3 satellite to the 82° W.L. orbital location pursuant to an agreement between DIRECTV and Telesat Canada ("Telesat").

II. BACKGROUND

2. DIRECTV 3 is a Boeing 601-model spacecraft that was originally clustered with several other DIRECTV satellites at the 101° W.L. orbital location. On May 4, 2002, one of the two spacecraft control processors ("SCP") on the DIRECTV 3 satellite failed.

1 See File No. SAT-STA-20030903-00300 ("DIRECTV 3 STA Request"). This authorization concerns operations of the DIRECTV 3 space station only.

2 See File No. SAT-STA-20020910-00172 (filed September 6, 2002)("DIRECTV 3 Storage Orbit STA Request").

3 Id. at 1-2.

4 See Report No. SAT-00123, File No. SAT-STA-20020910-00172 (rel. Sept. 27, 2002). In connection with DIRECTV 3's relocation, DIRECTV also requested to move another satellite, DIRECTV 1R, into a position that would allow it to carry the traffic assigned to DIRECTV 3.

indicated that its safety concerns may have been overstated.⁵

3. Telesat's Nimiq 2 satellite malfunctioned on February 20, 2003, when a solar array failed, necessitating the shutdown of several transponders.⁶ As a result, Telesat has been unable to use the Nimiq 2 satellite to provide full back-up capacity to the Nimiq 1 satellite at 91° W.L. orbital location.⁷ Subsequently, Telesat and DIRECTV arranged to lease the DIRECTV 3 satellite to Telesat for use at the 82° W.L. and 91° W.L. orbital locations. On September 3, 2003, DIRECTV filed an application for an STA to move DIRECTV 3 from its storage orbit to the 82° W.L. orbital location.⁸ On September 4, 2004, DIRECTV began to move the DIRECTV 3 satellite to the 82° W.L. orbital location without Commission authorization.⁹ DIRECTV filed a subsequent STA request on October 3, 2003, seeking authority to maneuver DIRECTV 3 in order to keep it from entering the station-keeping box for Telesat's Nimiq 2 satellite.¹⁰

4. Telesat plans to use the DIRECTV 3 satellite not only to provide back-up capacity that has been lost as a result of Nimiq 2's malfunction, but also to improve the quality of the service Telesat provides to Canadian consumers by allowing the operation of the transponders on Nimiq 1 at a higher power level.¹¹ Nimiq 1 currently operates on medium power across all 32 frequencies available at 91° W.L.¹² Telesat plans, after testing DIRECTV 3 at the 82° W.L. orbital location, to co-locate DIRECTV 3 with Nimiq 1 at 91° W.L. to enable Telesat to operate 16 high power transponders (8 on DIRECTV 3 and 8 on Nimiq 1) and 16 medium power transponders on Nimiq 1.¹³ According to Telesat, high power operation is particularly important to remedy seasonal reductions in quality due to rain fade.¹⁴

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these changes permanent. See File No. SAT-MOD-20030205-00032. This application, except for the request to redesignate the orbital location for DIRECTV 1R, was withdrawn by DIRECTV on March 9, 2004. See Letter from James R. Butterworth, Senior Vice President, DIRECTV, to Thomas S. Tycz, Chief, Satellite Division, International Bureau, dated March 9, 2004.

⁵ See Letter from James Butterworth, Senior Vice President, DIRECTV, to Thomas S. Tycz, Chief, Satellite Division, dated April 24, 2003, File No. SAT-STA-20020910-00172.

⁶ See DIRECTV 3 STA Request at 2. See also *Ex Parte* letter from Jennifer Hindin, Counsel for Telesat Canada, to Marlene H. Dortch, Secretary, FCC, dated March 15, 2004, at 2.

⁷ *Id.*

⁸ See DIRECTV 3 STA Request at 2. See also *Ex Parte* letter from Jennifer Hindin, Counsel for Telesat Canada, to Marlene H. Dortch, Secretary, FCC, dated March 15, 2004, at 2.

⁹ See Letter from James H. Barker, Counsel for DIRECTV, to Thomas S. Tycz, Chief, Satellite Division, dated October 9, 2003. On June 18, 2004, the Commission issued a Notice of Apparent Liability for Forfeiture in the amount of \$87,500 to DIRECTV for unauthorized repositioning of the DIRECTV 3 satellite from the orbit at which it was authorized, and maintenance of that satellite at unauthorized locations, in willful and repeated violation of Section 25.117(a) of the Rules, 47 C.F.R. § 25.117(a). *DIRECTV, Inc.*, FCC 04-138 (released June 18, 2004).

¹⁰ See File No. SAT-STA-20031003-00310. This STA was approved on October 3, 2003. DIRECTV has also executed a number of other stationkeeping maneuvers for the DIRECTV 3 satellite. See, e.g., Letter from James H. Barker, Counsel for DIRECTV, to Thomas S. Tycz, Chief, Satellite Division, dated May 19, 2004.

¹¹ *Id.* at 1-2.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

A. The Transaction Between DIRECTV and Telesat Canada

5. The lease of DIRECTV 3 is pursuant to a separate agreement concerning the use of DIRECTV 3 and another DIRECTV satellite, DIRECTV 5, at Canadian orbital locations. The DIRECTV lease provides Telesat the exclusive right to use the capacity of DIRECTV 3 at either the 82° W.L. or 91° W.L. orbital locations, and to direct and control use of DIRECTV 3 at those locations, provided that any use of the capacity to offer service to the United States at either of these locations is subject to DIRECTV's approval, which is not to be unreasonably withheld by DIRECTV.

6. The agreement to lease DIRECTV 3 to Telesat terminates upon five days written notice to Telesat from DIRECTV, in the event of the catastrophic failure of any two DIRECTV satellites, or on December 31, 2006, if U.S. regulatory approvals required to relocate DIRECTV 5 to the 72.5° W.L. orbital location, have not been approved in a manner acceptable to DIRECTV,¹⁵ or upon end-of-life of the DIRECTV 3 satellite. The lease agreement provides that DIRECTV, through its affiliated company PanAmSat Licensee Corp. ("PanAmSat"), will perform telemetry, tracking, and control functions (TT&C functions) under Telesat's direction and control, until Telesat has developed and installed the necessary earth station facilities in Canada to perform such functions.¹⁶

7. On September 26, 2003, Industry Canada granted Telesat authority to use DIRECTV 3/Nimiq 2i to provide Broadcast Satellite Service ("BSS") in Canada using the 82° W.L. orbital location.¹⁷ Industry Canada granted this authority until the earlier of March 31, 2016, or when the satellite reaches the end of its operational life. The authorization provides that "... additional conditions may be required to give effect to any understandings developed between Industry Canada and any other administration respecting the use of the restoration satellite facilities."¹⁸ In separate proceedings, DIRECTV has filed a STA Request for the relocation of its DIRECTV 5 satellite to the 72.5° W.L. orbital location¹⁹ and a request for the authorization of Earth stations to receive signals from DIRECTV 5, for the purpose of providing local-into-local service in the US.²⁰

B. Confidentiality Request

8. DIRECTV filed the supporting documents to the DIRECTV 3 STA request pursuant to a request to withhold these documents from public inspection and accord them confidential treatment pursuant to Sections 0.457 and 0.459 of the Commission's rules.²¹ DIRECTV indicated in that request that the document submitted with that filing "contains sensitive trade secrets, and commercial information

¹⁵ In such event, the agreement provides that DIRECTV will transfer and convey title to the DIRECTV 3 satellite to Telesat.

¹⁶ The DIRECTV 3 Lease provides Telesat shall begin performing TT&C functions from its ground equipment within one year after the date when testing of the DIRECTV 3 satellite at a Canadian orbital location is completed, subject regulatory approvals for and the delivery of certain technical information to Telesat by DIRECTV.

¹⁷ See Letter from Jan Skora, Director General, Radiocommunication and Broadcasting Regulatory Branch, Industry Canada, re Broadcasting -Satellite Service (BSS) Restoration, to Ted Ignacy, Vice President, Telesat Canada, dated September 26, 2003.

¹⁸ *Id.*

¹⁹ See File No. SAT-STA-20040107-00002, filed January 7, 2004.

²⁰ See File No. SES-LFS-20040112-00023, filed January 12, 2004.

²¹ 47 C.F.R. §§ 0.457, 0.459. See DIRECTV Enterprises, LLC, Request for Confidential Treatment, filed October 7, 2003, File No. SAT-STA-20030903-00300.

that falls within Exemption 4 of the Freedom of Information Act (“FOIA”).²² Pegasus Development Corp. (“Pegasus”) filed a FOIA request for these documents.²³ On March 15, 2004, both DIRECTV and Telesat responded to Pegasus’ FOIA request. DIRECTV submitted portions of these confidential documents for inclusion in the public file,²⁴ effectively withdrawing the request for confidential treatment for those portions of the documents that were submitted. We subsequently released a Protective Order that permitted conditional access to these confidential documents in their entirety and gave commenters a period of time in which to file comments in this and other related proceedings.²⁵

C. Comments

9. Digital Broadband Applications Corp. (“DBAC”) filed comments opposing this STA.²⁶ On November 12, 2003, DIRECTV and Telesat filed oppositions to DBAC’s comments.²⁷ Pegasus and EchoStar Satellite, LLC (“EchoStar”) filed supplemental comments on April 5, 2004, pursuant to the Protective Order.²⁸ SES Americom, Inc. (“SES Americom”) filed reply comments to EchoStar’s supplemental comments on April 20, 2004.²⁹ DIRECTV and Telesat filed responses to these supplemental comments on April 12, 2004.³⁰ DBAC and Pegasus are both companies that have been granted an authorization by the Commission to deploy one million earth stations in the U.S. to communicate with the Nimiq 1 and Nimiq 2 satellites.³¹

²² *Id.* at 1. DIRECTV extended this request to cover documents related to its agreement with Telesat that were filed with the Commission on December 17, 2003, and January 13, 2004. *See* DIRECTV’s Response to Pegasus Development Corporation Freedom of Information Request, Letter to Managing Director, FCC, from James Barker, Counsel for DIRECTV, Inc., filed March 15, 2004.

²³ *See* Freedom of Information Act Request, FOIA No. 2004-227, DIRECTV ENTERPRISES, LLC, from Bruce Jacobs, Counsel for Pegasus Development Corporation to Managing Director, FCC, filed January 27, 2004 (Pegasus FOIA Request).

²⁴ *See* DIRECTV’s Response to Pegasus Development Corporation Freedom of Information Request, Letter to Managing Director, FCC, from James Barker, Counsel for DIRECTV, Inc., filed March 15, 2004. *See also* Telesat Canada Opposition to Pegasus Development Corporation Request, dated March 15, 2004. *See also* Letter from Jim Barker, Counsel for DIRECTV, to Thomas S. Tycz, Chief, Satellite Division, International Bureau, dated March 15, 2004, File No. SAT-STA-20030903-00300. This filing did not publicly disclose any contractual terms concerning DIRECTV’s use of the DIRECTV 5 satellite at the 72.5° W.L. orbital location.

²⁵ *Order Adopting Protective Order*, DA 04-755 (rel. Mar. 22, 2004) (“*Protective Order*”).

²⁶ Comments of Digital Broadband Applications Corp., filed October 27, 2003 (“DBAC Comments”).

²⁷ *See* Opposition of DIRECTV Enterprises, LLC, filed November 12, 2004 (“DIRECTV Opposition”) and Opposition of Telesat Canada, filed November 12, 2004 (“Telesat Opposition”).

²⁸ Pegasus Development Corporation Reply and Supplemental Comments, filed April 5, 2004 (“Pegasus Supplemental Comments”); EchoStar Satellite, LLC Comments with Respect to Information Filed Pursuant to Protective Order, filed April 5, 2004 (“EchoStar Supplemental Comments”).

²⁹ Reply Comments of SES Americom, Inc., filed April 20, 2004 (“SES Americom Reply”).

³⁰ GM, DIRECTV and News Corp. Consolidated Reply Comments, filed April 12, 2004 (“DIRECTV Consolidated Comments”); Telesat Canada Response to Comments, filed April 12, 2004 (“Telesat Response”).

³¹ *See* Digital Broadband Applications Corp., Consolidated Application for Authority to Operate U.S. Earth Stations with a U.S.- Licensed Ku-Band FSS Satellite and Canadian- Licensed Nimiq 1 and Nimiq 2 Satellites to Offer Integrated Two-Way Broadband Video and Data Service Throughout the United States, 18 FCC Rcd 9455 (2003); Pegasus Development Corporation, Consolidated Applications for Authority to Operate One U.S. Transmit/Receive Fixed Earth Station (Call Sign E010320) and 1,000,000 Receive-Only Earth Stations (Call Sign E020022) with the

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III. DISCUSSION

10. We find that granting this STA is in the public interest. The use of the DIRECTV 3 satellite to augment the service currently provided by Telesat's Nimiq 1 and Nimiq 2 satellites helps to assure continuity of service to Canadian customers. This comports with cooperation between U.S. and Canadian satellite providers in times of emergency or capacity need.

11. The objections to the DIRECTV 3 STA request appear to be premised on two concerns. First, as expressed by EchoStar,³² the DIRECTV 3 satellite will provide Direct Broadcast Satellite ("DBS") service to the U.S. from a Canadian BSS orbital location. Second, as expressed by Pegasus and DBAC, the arrangement between DIRECTV and Telesat would foreclose other service providers from using the Nimiq satellites and the DIRECTV satellite to provide service to the United States.

12. As to the first concern -- that DBS service might be provided to the U.S. by the DIRECTV 3 satellite from a Canadian BSS orbital location -- EchoStar believes that the planned use of Canadian orbital locations by foreign entities should be the subject of a rulemaking as these orbital locations could potentially be used to provide service to the United States.³³ The STA that is before us does not in any way request service to the U.S. Furthermore, while the DIRECTV/Telesat agreement does not preclude service to the U.S., DIRECTV or Telesat could not provide service to the U.S. without first requesting approval by the Commission of such service. Procedurally, such approval would be requested by the filing of an earth station application.³⁴ Thus, we find that it is not necessary to address the issue of service to the U.S. from the DIRECTV 3 satellite, or any changes to the procedural mechanisms or policies for considering such authorizations, until there is a concrete proposal for such service before us. For the same reasons, we see no need to adopt the condition requested by DBAC, restricting DIRECTV from utilizing any of the transponders on the DIRECTV 3 satellite for provision of service to the U.S.³⁵ Any concerns raised by any such proposal can be adequately addressed if such a proposal is actually placed in an application before us.

13. As to the second concern -- that the DIRECTV/Telesat arrangement would foreclose other service providers from using the Nimiq satellites or from DIRECTV 3 satellite to provide service to the United States -- this concern appears unfounded. The DIRECTV/Telesat agreement does not preclude

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Canadian-Licensed Nimiq 1 and Nimiq 2 Satellites to Offer Direct Broadcast Satellite Service Throughout the United States, File Nos. SES-LIC-20011121-02186, SES-LIC-20020111-00075, DA 04-909, *Order* (rel. March 31, 2004) 2004 WL 635289 (2004). Both DBAC's and Pegasus's applications were filed prior to the partial failure of the Nimiq 2 satellite, and neither company has a contractual arrangement with Telesat for use of either of the Nimiq satellites.

³² EchoStar Supplemental Comments at 3.

³³ SES Americom filed comments arguing that a rulemaking to address provision of DBS service to the U.S. from foreign satellites is unnecessary, as this is handled under DISCO II, and states that the Commission should evaluate the DIRECTV 3 request on a case-by-case basis just as it would for any other foreign satellite. *See* SES Americom Reply at 2-4. EchoStar also advocates a reexamination of the Commission's order in *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, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II* or *DISCO II Order*). *Id.* Such a reexamination is outside the scope of this STA proceeding and need not be addressed here.

³⁴ *See DISCO II Order* and 47 C.F.R. §§ 25.131, 25.137.

³⁵ DBAC Comments at 4-5.

service to the United States using these satellites.³⁶ In fact, the relocation of the DIRECTV 3 satellite may have a beneficial effect on the likelihood of additional service to the United States, to the extent that it increases capacity at the 82° W.L. and 91° W.L. orbital locations.

14. As a practical matter, however, it appears from statements of Telesat that any additional capacity made available as a result of the DIRECTV 3 satellite's use at the 82° W.L. and 91° W.L. orbital location will be fully used to meet Canadian requirements.³⁷ Under these circumstances, we decline to adopt DBAC's request that the Commission condition any grant of the DIRECTV 3 STA on a requirement that DIRECTV make capacity on DIRECTV 3 available to any U.S. company that is authorized to utilize that capacity in a Canadian BSS orbital location from a U.S. earth station.³⁸ We agree with Telesat that it would be inappropriate for the Commission to require DIRECTV to make DIRECTV 3 capacity available to other U.S. companies, particularly because the leasing arrangement for the DIRECTV 3 satellite is intended to make the satellite's capacity available for use by Telesat.³⁹ Under these circumstances, we see no competitive benefit from adopting a priori limits on the possible entities to which Telesat may offer any available capacity.

15. Finally, even if DIRECTV's STA request were denied, there would be no transponders available for use by U.S. companies, absent further action. The last orbital location from which DIRECTV 3 was authorized to operate, the storage orbit, is not an orbital location from which the DIRECTV 3 satellite could provide service to consumers. Under these circumstances, we conclude that the use of the satellite to provide service to Canada has no detrimental impact upon competition in the United States market.

A. Confidentiality

16. Both DBAC and Pegasus cite the need for public disclosure of the DIRECTV/Telesat agreements that are related to the DIRECTV 3 STA and other related matters. Despite the availability of these documents pursuant to the Protective Order, Pegasus argues that the Protective Order unfairly impairs the ability of interested parties to comment effectively in this proceeding, and that the Commission should require DIRECTV and Telesat to publicly disclose the contents of these documents. However, the Protective Order specifically provided a basis for all parties to participate in this DIRECTV STA proceeding by allowing those parties who agree to abide by the terms of the Protective Order to file comments for a specified period after having had access to the confidential documents even if they had not participated in this proceeding earlier.⁴⁰ Furthermore, substantial portions of the agreements between DIRECTV and Telesat have been released for public inspection, particularly insofar as those documents concern the DIRECTV 3 satellite. For these reasons we see no need to further address confidentiality for purposes of our reaching a decision on the DIRECTV 3 STA request.

³⁶ Although the agreement provides that DIRECTV must approve such use of the DIRECTV 3 satellite, its agreement may not be unreasonably withheld. In the absence of evidence that DIRECTV has unreasonably withheld approval of such service, this provision of the agreement does not raise concerns.

³⁷ Telesat Opposition at 3. Telesat indicates that the transponders in question on Nimiq 1 and Nimiq 2 are already leased exclusively to a Canadian DTH provider, Bell ExpressVu, so there are presently no transponders left to lease, nor will any new capacity be available once DIRECTV 3 is put into service pursuant to a Canadian authorization. Telesat also indicates that the DIRECTV 3 satellite will be pointed toward the North to enhance service to Canada, and thus would not be suitable for service to the United States.

³⁸ DBAC Comments at 5.

³⁹ Telesat Opposition at 4.

⁴⁰ See DIRECTV 3 Protective Order at 2 (para. 2).

B. Technical Considerations

17. In its STA request to move DIRECTV 3 to a storage orbit, DIRECTV initially expressed concern that DIRECTV 3, with only one remaining SCP, presented a potential hazard to other satellites.⁴¹ However, DIRECTV later expressed that while it stood by its decision to put this satellite in a temporary storage orbit, it did not wish to over-emphasize concerns about this SCP failure to the extent that an otherwise fully operational satellite would be rendered useless by the failure of the SCP unit.⁴² On December 8, 2003, the Satellite Division sent a letter to DIRECTV requesting additional information concerning the STA request, including information on the statistical failure rate for SCP's.⁴³ That letter referred to a statistical analysis of "tin whisker" failure (crystalline filaments that grow from circuit boards on satellites that have in some instances short-circuited and consequently disabled SCP's) done by PanAmSat, a company under common ownership with DIRECTV.⁴⁴ DIRECTV responded to this letter on December 18, 2003, stating that it generally relied on the statistical analysis that the Commission referred to in its inquiry.⁴⁵ Based on the information provided and relied upon by DIRECTV, we have no basis for requiring the DIRECTV 3 satellite to remain in a storage orbit.

C. Other Concerns

18. We have exchanged letters with Industry Canada in order to ensure that there is a mutual understanding regarding the operation of the DIRECTV 3 satellite. The understandings, and the factual background for these understandings, are provided as Annex A and are material considerations for the authorization contained in this Order. In general, the exchange of letters indicates that any DIRECTV 3 space station operations at the 82° W.L. or 91° W.L. orbital locations, or while transiting between those two locations, will be pursuant to authorization of Telesat by Industry Canada.

IV. CONCLUSION AND ORDERING CLAUSES

19. Based on the foregoing, we find that grant of DIRECTV's application will serve the public interest by providing for the efficient use of the geostationary satellite orbit and spectrum in a manner that facilitates rapid efficient, and reliable communications.

20. Accordingly, IT IS ORDERED, that the application of DIRECTV, Inc., File No. SAT-STA-200300903-00300 (Call Sign DBS 8402) is GRANTED, and DIRECTV, Inc., is authorized for a period of 180 days to relocate DIRECTV 3 to the 82° W.L. orbital location and to conduct space station Telemetry, Tracking and Command communications related to this relocation.

⁴¹ See DIRECTV 3 Storage Orbit STA Request at 2.

⁴² See Letter from James Butterworth, Senior Vice President, DIRECTV, to Thomas S. Tycz, Chief, Satellite Division, dated April 24, 2003.

⁴³ See Letter from Thomas S. Tycz, Chief, Satellite Division, to James H. Barker, Counsel for DIRECTV, dated December 8, 2003.

⁴⁴ See PanAmSat Licensee Corp., Further Supplement to STA, filed April 24, 2003, File No. SAT-STA-20030324-00039.

⁴⁵ See Letter from James H. Barker, Counsel for DIRECTV, to Thomas S. Tycz, Chief, Satellite Division, dated December 18, 2003. In that letter, DIRECTV stated: "DIRECTV has not conducted its own statistical analysis of tin whisker failures, nor is it aware of any analysis other than PanAmSat's. DIRECTV has received two briefings from Boeing regarding tin whisker failures. The hypothesis offered by Boeing supports PanAmSat's analysis -- that in-orbit time is the only parameter that shows a strong correlation to failure probability."

21. DIRECTV, Inc., shall coordinate all transfer orbit Telemetry, Tracking, and Control operations with other potentially affected in-orbit operators.

22. During relocation of the DIRECTV 3 satellite, DIRECTV, Inc.'s operations shall be on a non-harmful interference basis, i.e., DIRECTV, Inc., shall not cause interference to, and shall not claim protection from interference caused to it by, any other lawfully operating satellites.

23. In the event that any harmful interference is caused as a result of DIRECTV, Inc.'s operations during the relocation of the DIRECTV 3 satellite, DIRECTV, Inc., shall cease operations immediately upon notification of such interference and shall inform the FCC in writing immediately of such an event.

24. DIRECTV, Inc., shall provide the Chief, Satellite Division, International Bureau, with 30 days notice (confirmed email considered sufficient) prior to commencement of use of Telesat Canada's earth stations to provide the Earth station segment of Telemetry, Tracking, and Command communications.

25. DIRECTV, Inc., shall provide the Chief, Satellite Division, International Bureau, with a minimum of 60 days notice (confirmed email considered sufficient) prior to any transfer of title, pursuant to Article 5.1(b) of the DIRECTV 3 Lease Agreement, of the DIRECTV 3 satellite to Telesat Canada.

26. Grant of this special temporary authority is without prejudice to any enforcement action in connection with the operations and location of the DIRECTV 3 satellite prior to the date of this action.

27. DIRECTV, Inc., is afforded thirty days to decline this authorization as conditioned. Failure to respond within this period will constitute formal acceptance of the authorization as conditioned.

28. This Order is issued pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Cassandra C. Thomas
Deputy Chief, Satellite Division
International Bureau

Annex A



International Bureau

Federal Communications Commission
Washington, DC 20554

June 15, 2004

Ms. Chantal Beaumier
Director, Space and International Regulatory Activities
Radiocommunications and Broadcasting Regulatory Branch
Industry Canada
15th Floor, 300 Slater Street
Ottawa, Ontario, Canada
K1A 0C8

Re: Operations of the DirecTV 3/Nimiq 2i Space Station

Dear Ms. Beaumier:

This letter is to confirm the informal understandings of Industry Canada and the Federal Communications Commission (FCC) concerning certain technical issues involved in the operation of a Broadcasting-Satellite Service (BSS) satellite (known alternately as DirecTV 3 and Nimiq 2i) by DirecTV Enterprises, LLC (DirecTV) and by Telesat Canada (Telesat), pursuant to a lease agreement between DirecTV and Telesat. The following explanation is derived from the lease agreement.

The Transaction Between DirecTV and Telesat Canada

DirecTV currently operates the DirecTV 3 satellite subject to FCC authority. Under contracts between DirecTV and Telesat Canada, DirecTV agreed to locate the DirecTV satellite at either the 82° W.L. or 91° W.L. orbital location,¹ subject to necessary governmental approvals. The agreement provides a lease to Telesat of the exclusive right to use the capacity of DirecTV 3 at those locations, and to direct and control use of DirecTV 3 at those locations, provided that any use of the capacity to offer service to the United States at either of these locations is subject to DirecTV's approval, which is not to be unreasonably withheld.

The agreement to lease DirecTV 3 to Telesat terminates:

1. Upon five days written notice to Telesat from DirecTV, in the event of the catastrophic failure of any two DirecTV satellites.

¹ The term orbital location, in this context, refers to the nominal orbital position for Canadian frequency assignments under the ITU Region 2 Plan for BSS and Feeder Link Assignments, as contained in Appendix 30/30A of the Radio Regulations, and to any specific orbital location within the cluster defined by such assignment.

2. On December 31, 2006, if U.S. regulatory approvals required to relocate another satellite, DirecTV 5, to the 72.5° W.L. orbital location, have not been approved in a manner acceptable to DirecTV. In such event, the agreement provides that DirecTV will transfer and convey title to the DirecTV 3 satellite to Telesat, Telesat will assume full responsibility for the operation and control of the DirecTV 3 satellite and all obligations and liabilities associated therewith, and DirecTV no longer will have any responsibility to perform TT&C functions, or to remove the satellite from commercial operation or from orbit under any circumstances whatsoever.
3. Upon end-of-life of the satellite, i.e. upon a reasonable determination by DirecTV or Telesat that there is less than 30 kilograms of useable fuel remaining on the satellite.

The lease agreement provides that DirecTV, through its affiliated company PanAmSat, will perform telemetry, tracking, and control functions (TT&C functions) under Telesat's direction and control, until Telesat has developed and installed the necessary facilities in Canada to perform such functions. The lease agreement provides that DirecTV shall thereafter resume performing TT&C functions upon events listed in items 1 and 3 above. The lease agreement contemplates that, after Telesat begins performing TT&C functions from Earth station facilities in Canada, Telesat would undertake any corrective measure necessary in an effort to revive or command DirecTV 3/Nimiq 2i following a failure or an anomaly.

The lease agreement contemplates that the DirecTV satellite will first be moved to the 82° W.L. orbital location, and will be tested at that location. The lease agreement provides that Telesat shall then advise DirecTV as to whether the satellite should remain at that location or be relocated to the 91° W.L. orbital location. The lease agreement contemplates that, thereafter, the satellite would not be relocated without the prior written permission of DirecTV, unless the relocation is required to provide emergency restoration of services provided by Bell ExpressVu in the event of failure of all or part of the payload of Nimiq 1 or Nimiq 2. The Nimiq 1 and Nimiq 2 satellites are currently located at 91° W.L. and 82° W.L., respectively.

On September 26, 2003, Industry Canada granted Telesat authority to use DirecTV 3/Nimiq 2i to provide BSS service in Canada using the 82° W.L. orbital location. Industry Canada granted this authority until the earlier of March 31, 2016, or when the satellite reaches the end of its operational life. The authorization provides that "... additional conditions may be required to give effect to any understandings developed between Industry Canada and any other administration respecting the use of the restoration satellite facilities." DirecTV has filed with the FCC a request for Special Temporary Authorization to move the DirecTV 3 satellite from its currently authorized location to the 82° W.L. orbital location.

The lease agreement requires DirecTV to take steps necessary to comply with U.S. export control regulations.

Informal Understandings between Industry Canada and the FCC on certain technical issues concerning operation of DirecTV 3/Nimiq 2i

It is my understanding that our two agencies have concurred on the following technical issues concerning the operation of DirecTV 3/Nimiq 2i:

1. At the 82° W.L. and 91° W.L. locations, the DirecTV 3/Nimiq 2i satellite will operate subject to Canadian authority. Because these locations are Canadian entries to the Region 2 Plan of Appendix 30/30A of the ITU Radio Regulations, the Canadian administration will have responsibility for compliance with the ITU Radio Regulations (including the requirement for licensing as specified in Article 18.1 of the Radio Regulations, and any applicable agreement-seeking procedures) in connection with operation of the DirecTV 3/Nimiq 2i satellite at the 82° W.L. or 91° W.L. orbital locations, and in connection with any intentional relocation of the satellite from one of the two orbital locations to the other.
2. The following operations of the DirecTV 3/Nimiq 2i satellite will be subject to licensing by the FCC:
 - a) Any operations of the satellite other than operations i.) at the 82° W.L. orbital location, ii.) at the 91° W.L. orbital location, or iii.) while it is transiting between those orbital locations,
 - b) Any operations as a result of equipment failure in the satellite that results in the inability to maintain the satellite within ± 0.1 degrees of its assigned position at either the 82° W.L. or 91° W.L. orbital location, or
 - c) Any operations after termination of the lease agreement, except in the case of a termination pursuant to the second termination provision described above.

In the case of a termination pursuant to the second termination described above, and with respect to any future transfer from DirecTV to Telesat of title to the DirecTV 3/Nimiq 2i satellite, additional consultations between our two agencies may be necessary, as well as a possible additional informal understanding or an agreement between the governments of the United States and Canada. This letter and any associated FCC action approving the relocation of DirecTV 3 do not constitute approval of such transfer or conveyance of title, or of transfer or disposal of the FCC station license for DirecTV 3, or any rights thereunder.

3. Industry Canada, through the Director, Space and International Regulatory Activities, will provide the FCC with 4 (four) days advance written notice (email with confirmed receipt from the FCC's Chief, International Bureau, Satellite Division, will be considered sufficient) of any planned termination or expiration of the Canadian Licence for the DirecTV 3/Nimiq 2i satellite.

4. DirecTV's ability to use the DirecTV 3 satellite, in the event of failure of two DirecTV satellites, within the time frame specified in the DirecTV/Telesat lease agreement, is a private contractual matter between DirecTV and Telesat.
5. Industry Canada will condition the Nimiq 2i Licence to require Telesat to take any reasonable measures to maintain, barring catastrophic failure of satellite components, the capability to de-orbit the DirecTV 3/Nimiq 2i spacecraft to an orbit consistent with requirements under consideration in the FCC proceeding, *In the matter of Mitigation of Orbital Debris*, FCC Docket No. 02-54.

The informal understandings set forth above in this letter concerning operation of the DirecTV 3/Nimiq 2i satellite is not a concurrence by the FCC or the U.S. Administration with any future Canadian filings with the ITU Radiocommunication Bureau for the 82° W.L. or 91° W.L. orbital locations, under Appendices 30 or 30A of the ITU Radio Regulations. It is my understanding that the FCC and Industry Canada will, separately, and as part of the agreement-seeking process applicable under ITU Radio Regulations, work in good faith to complete that process, insofar as necessary, in connection with the operation of the DirecTV 3 satellite at the 82° W.L. or 91° W.L. orbital locations.

The FCC has not issued any of the authorizations that would be necessary in order to provide direct-to-home services to customers in the United States using the DirecTV 3/Nimiq 2i satellite at the 82° W.L. or 91° W.L. orbital location. Such authorizations would only be considered by the FCC in the event an application were submitted for a blanket authorization of Earth stations seeking to receive direct-to-home transmissions in the United States from the Nimiq 2i satellite.

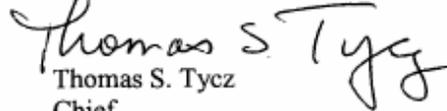
In the event of failure of two DirecTV satellites which triggers DirecTV's exercise of its contractual rights to terminate the lease, and in the event that at that time there are any provisions in Telesat's license from Industry Canada, or any provisions in the Canadian laws and regulations governing the telecommunications operations of Telesat Canada, that would preclude or otherwise limit the exercise of DirecTV's contractual rights within the time frames specified in the DirecTV/Telesat agreement, the FCC would appreciate the opportunity to consult with Industry Canada, prior to any exercise of such licensing authority, or application of such law or regulation by Industry Canada. I would appreciate acknowledgement of these views and expression of any views which Industry Canada may have concerning the matter discussed in this paragraph. Let me also express the FCC's willingness to discuss this matter further, in the event, at a later date, it becomes necessary to do so.

All notices, inquiries, and correspondence from Industry Canada concerning these matters should be directed to the Chief, Satellite Division, International Bureau (phone number 202.418.0719) (email Thomas.Tycz @fcc.gov, with a copy to Karl.Kensinger@fcc.gov), on the part of the FCC. The FCC will forward all notices, inquires, and correspondence concerning these matters to the Director, Space and International Regulatory Activities (phone number

613.998.3819) (email beaumier.chantal@ic.gc.ca), on the part of Industry Canada. Please let us know if this contact information changes.

If the foregoing corresponds to your understanding of the informal arrangements between our two agencies concerning the various technical issues involved in the operation of DirecTV 3/Nimiq 2i, please confirm by return letter.

Sincerely,



Thomas S. Tycz
Chief
Satellite Division

cc: Paul Bush
Vice President, Corporate Development
Telesat Canada

Susan Eid
DirecTV Enterprises, LLC.



Industry Canada Industrie Canada

300 Slater Street
Ottawa, ON K1A 0C8

Our File: 6215-5-12

JUN 15 2004

Thomas S. Tycz
Chief, Satellite Division
International Bureau
Federal Communications Commission
Washington, D.C. 20554

Dear Mr. Tycz:

Thank you for your letter of June 15, 2004 setting out our informal common understandings concerning certain technical issues involved in the operation of a Broadcasting-Satellite Service (BSS) satellite (known alternately as DirecTV 3 and Nimiq 2i) by DirecTV Enterprises, LLC (DirecTV) and by Telesat Canada (Telesat), pursuant to a lease agreement between DirecTV and Telesat.

I am pleased to provide my confirmation of our informal understandings and acknowledgement of the other views expressed in your letter. It is Industry Canada's view that, in the event of a transfer from DirecTV to Telesat of title to the DirecTV 3/Nimiq 2i satellite, where the satellite would be under the direction and control of Telesat Canada, the satellite would be subject to licensing by the Canadian administration. I would also like to confirm, however, Industry Canada's willingness to discuss this matter, including the development of understandings or agreements between the governments of the United States and Canada, should it be necessary to do so.

Additionally, Industry Canada agrees that, in the event of termination of the lease agreement owing to failure of two DirecTV satellites, DirecTV's ability to use the DirecTV 3 satellite at an orbital position licensed by the FCC is a private contractual matter between DirecTV and Telesat. Nonetheless, should there be any provisions in Telesat's licence, or any provisions in the Canadian laws and regulations governing the telecommunications of Telesat Canada, that would preclude or otherwise limit the exercise of DirecTV's contractual rights to terminate the lease and use the satellite within the time frames specified in the DirecTV/Telesat agreement, the FCC would be provided, to the extent possible under the circumstances, an opportunity to consult with Industry Canada prior to any exercise of licensing authority, or application of law or regulation by Industry Canada, that would preclude.

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Canada

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Finally, I want to express my appreciation for the effort your administration is dedicating to consideration of this commercial arrangement between DirecTV and Telesat to facilitate the provision of urgently needed capacity for Canadian satellite services.

Sincerely,



Chantal Beaumier
Director, Space and International
Regulatory Activities

cc: Paul Bush, Telesat Canada