

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

In the Matters of)
Application of DIRECTV Enterprises, LLC) File No. SAT-STA-20040107-00002
Request For Special Temporary Authority for the) Call Sign: S2417
DIRECTV 5 Satellite)
Application of DIRECTV Enterprises, LLC) File No. SES-LFS-20040112-00023
Request for Blanket Authorization for 1,000,000) Call Sign: E040024
Receive Only Earth Stations to Provide Direct)
Broadcast Satellite Service in the U.S. using the)
Canadian Authorized DIRECTV 5 Satellite at the)
72.5° W.L. Broadcast Satellite Service Location)

ORDER AND AUTHORIZATION

Adopted: August 12, 2004

Released: August 13, 2004

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant DIRECTV Enterprises, LLC's ("DIRECTV") application for Special Temporary Authority ("STA") to relocate its DIRECTV 5 satellite to the 72.5° W.L. orbital location. That request is pursuant to an agreement between DIRECTV and Telesat Canada ("Telesat"). We also grant DIRECTV's request for a blanket authorization for 1,000,000 receive only earth stations, which will be used to provide "local-into-local" signals to U.S. consumers using the DIRECTV 5 satellite. That satellite will operate at the 72.5° W.L. orbital location pursuant to a Canadian space station authorization issued to Telesat.

1 The term "72.5° W.L. orbital location," as used in this Order, refers to the nominal orbital position for the relevant Canadian frequency assignment under the International Telecommunication Union ("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 The term "local-into-local," as used in this Order, refers to provision via satellite retransmission of local broadcast channels to subscribers who reside in the local TV station's market, which is defined as a Designated Market Area, or "DMA". See 17 U.S.C. § 122(j)(2)(A).

3 This action is taken pursuant to Section 25.132 of the Commission's Rules. See 47 C.F.R. § 25.132(j) (requiring receive-only Earth stations that would operate with non-U.S. licensed space stations to request a license). Any Earth station authorizations required for tracking, telemetry, and command functions in connection with operations of the DIRECTV 5 satellite will be addressed separately.

II. BACKGROUND

A. The Transaction Between DIRECTV and Telesat Canada

2. The proposed relocation of the DIRECTV 5 is pursuant to an agreement between DIRECTV and Telesat concerning the use of DIRECTV 5 and another DIRECTV satellite, DIRECTV 3,⁴ at orbital locations assigned to Canada under the ITU Region 2 Plans for the BSS and associated feeder-links.⁵ DIRECTV agreed to move the DIRECTV 5 satellite to the 72.5° W.L. orbital location, subject to the successful launch and in-orbit testing of the DIRECTV 7S satellite, and subject to necessary governmental approvals. DIRECTV 7S has since been launched and has replaced the DIRECTV 5 satellite at the 119° W.L. orbital location.⁶ The agreement provides DIRECTV with an exclusive right to use all of the capacity on the DIRECTV 5 satellite at the 72.5° W.L. orbital location until at least September 30, 2008. Under the agreement, DIRECTV may, under certain circumstances, move the DIRECTV 5 satellite to one of its FCC licensed orbital locations,⁷ upon 5 days notice to Telesat, in the event that DIRECTV 5 is needed to replace some or all of the capacity of certain DIRECTV satellites due to a satellite or launch failure. Upon the exercise of certain options outlined in the agreement, operations of DIRECTV 5 at the 72.5° W.L. orbital location may continue until June 30, 2013.

3. The agreement contemplates that, once DIRECTV 5 is at the 72.5° W.L. orbital location, it will be operated by Telesat pursuant to a separate operations agreement. DIRECTV 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, which shall occur within 12 months after receipt of regulatory approvals necessary to relocate DIRECTV 5 to the 72.5° W.L. orbital location. On December 17, 2003, Industry Canada provided Telesat with an approval in principle to develop and operate a broadcast-satellite space station at the 72.5° W.L. orbital location.⁸

B. Procedural History

4. On October 7, 2003, DIRECTV filed a copy of its agreement with Telesat and requested that it be withheld from public inspection pursuant to Sections 0.457 and 0.459 of the Commission's rules.⁹ On January 7, 2004, DIRECTV filed its STA request to relocate the DIRECTV 5 satellite. On January 12,

⁴ The DIRECTV 3 satellite was addressed in a separate proceeding. DIRECTV, Inc., *Order*, DA 04-1761 (Int'l Bur., Sat. Div., released June 23, 2004).

⁵ The Plan for the Broadcasting-Satellite Service (BSS) in the Band 12.2-12.7 GHz in Region 2 is contained in Appendix 30 of the ITU Radio Regulations, and the associated Plan for the feeder-links in the frequency band 17.3-17.8 GHz for the broadcasting-satellite service in Region 2 is contained in Appendix 30A of the ITU Radio Regulations.

⁶ See DIRECTV Enterprises, Inc., *Order and Authorization*, 19 FCC Rcd 7954 (Int'l Bur. 2004).

⁷ DIRECTV holds licenses to operate satellites pursuant to the U.S. assignments for the 101, 110 and 119° W.L. orbital locations under the ITU Region 2 Plan for BSS and Feeder Link Assignments.

⁸ DIRECTV STA Request at Exhibit 1. Also available at [http://strategis.gc.ca/epic/internet/insmt-gst.nsf/vwapj/ignacy-e.pdf/\\$FILE/ignacy-e.pdf](http://strategis.gc.ca/epic/internet/insmt-gst.nsf/vwapj/ignacy-e.pdf/$FILE/ignacy-e.pdf).

⁹ 47 C.F.R. §§ 0.457, 0.459. See DIRECTV Enterprises, LLC, Notification of Filing of Request for Confidential Treatment, filed October 21, 2003, and DIRECTV Enterprises, LLC, Request for Confidential Treatment, filed subject to a confidentiality request on October 7, 2003, both in File No. SAT-STA-20030903-00300. DIRECTV extended this request to cover documents related to its agreement with Telesat that were filed with the Commission on December 17, 2003, January 13, 2004, March 1, 2004, June 23, 2004, and June 29, 2004.

2004, DIRECTV filed its request for a blanket Earth station authorization. The Satellite Division issued a public notice of DIRECTV's STA request on January 15, 2004.¹⁰ On February 17, 2004, Pegasus Development Corporation ("Pegasus") and EchoStar Satellite, LLC ("EchoStar") filed petitions to deny the STA.¹¹ DIRECTV and Telesat filed an opposition to these pleadings on March 3, 2004, to which Pegasus, Echostar and SES Americom replied on March 10, 2004.¹² On March 15, 2004, DIRECTV and Telesat provided portions of previously confidential contracts for inclusion in the public file.¹³

5. On March 22, 2004, we released a Protective Order that permitted conditional access to the confidential documents submitted by DIRECTV, in their entirety, and gave commenters a period of time in which to file any additional comments that might result from review of those documents.¹⁴ Pursuant to the Protective Order, Pegasus and Echostar filed supplemental comments on April 5, 2004, to which DIRECTV, SES, and Telesat replied on April 12, 2004.

6. Separately, on March 25, 2004, we issued a Public Notice establishing a comment deadline concerning DIRECTV's request for a blanket Earth station authorization.¹⁵ On April 26, Pegasus filed a Petition to Deny the blanket Earth station application, and Echostar filed comments concerning that application. DIRECTV and SES responded on May 6, 2004.

7. On May 14, 2004, DIRECTV submitted summaries of *ex parte* meetings,¹⁶ and on May 26, 2004, DIRECTV submitted a letter responding to a question from Commission staff concerning operations of DIRECTV 5.¹⁷ On June 23, 2004, DIRECTV submitted a copy of its agreement with Telesat concerning Operational Services.¹⁸ On July 6, 2004, DIRECTV submitted portions of its agreement with Telesat, previously treated as confidential, for inclusion in the public file.¹⁹

¹⁰ Report No. SAT-00187 (released January 15, 2004).

¹¹ In addition, SES Americom, Inc. (SES Americom) filed a "Petition to Defer and Comments," and Rainbow DBS Company LLC filed a brief letter, on February 17, 2004. These comments both concerned the relationship between DIRECTV's STA request and the DIRECTV's request for a blanket Earth station authorization. Our subsequent action issuing a public notice concerning the blanket Earth station authorization, and our action today addressing both requests simultaneously, renders those concerns moot.

¹² The status of DIRECTV's STA request under the Commission's *ex parte* rules was modified to "permit but disclose," pursuant to 47 C.F.R. § 1.1200(a), on March 12, 2004. Report No. SAT-00201, DA 04-749 (released March 19, 2004).

¹³ Letter from Gary Epstein, Counsel for DIRECTV, to Marlene H. Dortch, Secretary of the FCC, dated March 15, 2004.

¹⁴ *Order Adopting Protective Order*, DA 04-755 (rel. Mar. 22, 2004) (*Protective Order*). In the *Protective Order*, the International Bureau (Bureau) required DIRECTV to disclose documents associated with both DIRECTV 5 and another satellite, DIRECTV 3, pursuant to a non-disclosure agreement. We considered the DIRECTV 3 application in another Order. See DIRECTV, Inc., *Order*, DA 04-1761 (released June 23, 2004).

¹⁵ Report No. SES-00590 (released March 25, 2004). That public notice also modified the status of the proceeding under the Commission's *ex parte* rules to a "permit but disclose" proceeding, pursuant to 47 C.F.R. § 1.1200(a).

¹⁶ *Ex Parte* Notification from William Wiltshire, Counsel for DIRECTV (May 14, 2004).

¹⁷ Letter from William Wiltshire, Counsel for DIRECTV to Thomas Tycz, Chief, Satellite Division, dated May 24, 2004, File No. SAT-STA-20040107-00002.

¹⁸ Letter from William Wiltshire, Counsel for DIRECTV, to Marlene H. Dortch, Secretary, FCC, dated June 23, 2004.

¹⁹ Letter from William Wiltshire, Counsel for DIRECTV, to Marlene H. Dortch, Secretary, FCC, dated July 6, 2004.

III. DISCUSSION

8. We find that granting the STA and associated blanket earth station authorization is in the public interest. These actions will provide satellite capacity for the provision of local-into-local services in 24 markets in which DIRECTV currently does not provide such service,²⁰ thereby improving the quality of service to U.S. consumers.²¹ We discuss below the basis for this conclusion, and various issues raised by parties to these proceedings.

9. *DISCO II Framework.* The Commission's *DISCO II Order* adopted a framework under which the Commission would consider requests for non-U.S. licensed satellite systems to serve the United States.²² To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market.²³ This procedure requires the service provider to apply for an earth station license that would list the foreign satellite as an authorized point of communication. Under the *DISCO II* framework, for direct-to-home services such as those involved in this case, we examine whether there are effective competitive opportunities for U.S.-licensed satellites to serve the home market of the non-U.S. satellite seeking access to the United States. We examine in particular whether there are *de jure* or *de facto* barriers to entry for the provision of analogous service, and whether any such barriers would cause competitive distortions in the United States. These factors are considered together with other public interest considerations to determine whether grant of the request would serve the public interest.

10. *DBAC Order and Competition Issues.* The *DISCO II* framework, as applied in the *DBAC* case²⁴ is relevant in this case.²⁵ In *DBAC*, we authorized a U.S. earth station operator to access a Canadian-authorized satellite to provide direct-to-home service to the United States. In finding that authorization to be in the public interest, we first examined whether there were *de jure* or *de facto* barriers to entry in the

²⁰ See Letter from William Wiltshire, Counsel for DIRECTV to Thomas Tycz, Chief, Satellite Division, dated May 24, 2004, at page 2, File No. SAT-STA-20040107-00002.

²¹ DIRECTV will continue to be considered a "DBS provider," pursuant to Section 25.701 of the Commission's Rules, 47 C.F.R. § 25.701, in connection with the operations of the DIRECTV satellite at the 72.5° W.L. orbital location.

²² See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II* or *DISCO II Order*).

²³ See *DISCO II*, 12 FCC Rcd at 24174, ¶ 186. For a more detailed summary of the *DISCO II* framework, see 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, *First Order on Reconsideration*, IB Docket No. 96-111, 15 FCC Rcd 7207, 7209-10, ¶ 4-5 (1999) (*DISCO II First Reconsideration Order*).

²⁴ Digital Broadband Applications Corp., *Order*, 18 FCC Rcd 9455 (Int'l. Bur. 2003) (*DBAC*).

²⁵ Echostar argues that this case presents issues which should be resolved in a rulemaking proceeding. Echostar STA Comments at 4-7 (rulemaking needed to address standards applied to request from DBS providers to access the U.S. market from non-U.S. DBS slots, and to examine what public interest showing is needed to overcome the lack of reciprocity with Canada); Echostar Blanket Earth Station Comments. Other parties disagree. See, e.g., SES STA Reply Comments; SES Blanket Earth Station Reply Comments. As indicated in *DBAC*, the Commission has already established through rule making proceedings the standards and procedural mechanisms for considering requests for access to the United States market using a foreign authorized satellite. See *DBAC*, citing 47 C.F.R. § 25.137; Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites to Provide Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, FCC 97-399, 12 FCC Rcd 24094 (1997), *recon.* 15 FCC Rcd 7207 (1999), *recon. denied* 16 FCC Rcd 19794 (2001).

Canadian market for services analogous to the services DBAC was seeking authority to provide in the United States. We found that such *de jure* barriers do exist. However, we also concluded that there was a compelling public interest justification for authorizing such service in the United States, and that grant of the authorization would enhance, rather than distort or harm, competition in the United States, by facilitating entry by a new competitor. Several parties note that this case differs from the *DBAC* case because DIRECTV, unlike DBAC, is an established competitor in the market for delivery of multi-channel video programming, and, therefore, grant of DIRECTV's request would not provide the benefits associated with entry of a new competitor into that market. For the reasons discussed below, we conclude that the benefits from grant of DIRECTV's proposal are nonetheless compelling and warrant favorable action on DIRECTV's request.

11. In *DBAC*, we considered, first, whether competitive distortions might result from authorizing DBAC to provide the services proposed. We found that competitive distortions would be likely to result only under a number of conditions: (1) through use of the Canadian satellites, the Applicant would have access to cost savings, subsidies or quality-enhancing assets not available to other U.S. service providers; (2) those cost savings, subsidies, or quality-enhancing assets would be sufficiently large to enable the Applicant to offer prices and quality of services that would cause some or all of the incumbent U.S. DTH/DBS providers to exit the market; (3) following exit of some or all of the domestic DTH/DBS providers, the Applicant would be able to raise the price of service to U.S. customers; and (4) entry barriers exist such that neither the incumbent U.S. DTH/DBS providers or new U.S. DTH/DBS providers could enter the market, thereby defeating the price increase.²⁶ We also noted that competitive distortions related to predatory pricing are a rare phenomenon, in part because of the high risk that they will be unsuccessful.²⁷ In this case, while this authorization will provide DIRECTV with access to quality-enhancing assets, i.e., satellite capacity for the provision of local-into-local services in 24 markets in which DIRECTV is not currently providing this service, there is no evidence that this access will create a competitive distortion by allowing DIRECTV to carry out a predatory strategy.

12. In *DBAC*, we then considered whether there was a compelling public interest justification for authorizing service. We found that, since DBAC had not yet entered the markets for DBS or multi-channel video programming distribution (MVPD) services, authorization of DBAC to provide these services using Canadian satellites would increase competition in DBS services and in MVPD services generally.²⁸ Here, we find that there is a compelling public interest justification for granting DIRECTV's application because it will facilitate DIRECTV's efforts to provide local broadcast channel service. DIRECTV states that it will use the satellite capacity of DIRECTV 5 at 72.5° W.L. to enhance its DBS service by providing satellite-delivered local broadcast channels in additional designated market areas (DMAs). The Commission recently approved the transfer of control of various Commission licenses and authorizations held by Hughes Electronics Corporation and its wholly or majority owned subsidiaries, including DIRECTV, to the News Corporation (News Corp.). In approving the transfer of control, the Commission recognized the importance of local broadcast television to its goal of fostering localism in media and concluded that availability of local broadcast channel service in additional DMAs would serve the public interest.²⁹ Inasmuch as there is no competitive distortion associated with this authorization and

²⁶ *DBAC* at 9462-63, ¶ 16.

²⁷ *Id.*

²⁸ *Id.*

²⁹ As a condition for the approval of the transfer of control to News Corp., the FCC required that DIRECTV provide, by year end 2004, local broadcast channel services in an additional 30 DMAs beyond what had been previously funded, projected or planned by Hughes/DIRECTV. General Motors Corporation, et al., *Memorandum Opinion and* (continued...)

grant of this authorization will facilitate the increase in provision of local broadcast channel service, we find that the benefits associated with grant of DIRECTV's proposal are compelling and warrant approval of the request.³⁰

13. We note that Pegasus filed a petition for reconsideration of the *Hughes/News Corp.* transfer, alleging in part that there are adverse competitive effects resulting from DIRECTV's use of the 72.5° W.L. orbital location, and that these effects warrant overturning the grant of its transfer application.³¹ To avoid pre-judging the reconsideration proceeding, we condition the blanket earth station license on the outcome of the reconsideration proceeding. With respect to Pegasus' allegations that DIRECTV lacked candor,³² we have reviewed DIRECTV's course of conduct in connection with the STA and Blanket Authorization requests, and do not find any lack of candor.³³ DIRECTV's action in this STA and earth station licensing proceeding were consistent with the licensee's obligations of candor, whether or not there may have been a difference of views as to whether certain materials were appropriate for confidential treatment.

14. Pegasus also notes that it and other companies have attempted to develop satellite services to compete with DIRECTV, and that DIRECTV's arrangements with Telesat effectively foreclose those opportunities by making unavailable orbital locations at which there are Canadian assignments in the ITU Regional BSS Plan.³⁴ Pegasus's concerns were addressed in a separate proceeding, insofar as they relate to the 82 and 91° W.L. orbital locations.³⁵ With respect to the 72.5° W.L. orbital location, Pegasus maintains that DIRECTV's arrangements with Telesat preclude the use of spectrum at 72.5° W.L. by Pegasus or by other competitors.³⁶ Pegasus also raises concerns that DIRECTV's arrangement precludes it from working directly with Telesat to develop the 72.5° W.L. location, and that the terms of DIRECTV's arrangement with Telesat provide DIRECTV with a right to use the location "in perpetuity".³⁷

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Order, 19 FCC Rcd 473, 616, ¶ 332, Appendix F, Conditions, Condition VI (released January 14, 2004) (*Hughes/News Order*), *recon. petition pending*.

³⁰ We emphasize that we cite the *Hughes/News Order* in support of our conclusion that providing local channel service to additional DMAs provides a public interest benefit. We do not reach the issue of whether DIRECTV has met the conditions in the *Hughes/News Order* concerning provision of additional local channel service.

³¹ Pegasus Petition for Reconsideration at 16-17. Pegasus attached the petition for reconsideration as an exhibit to its petition to deny DIRECTV's STA, and relied upon it in their petition to deny the DIRECTV blanket Earth station authorization.

³² See Pegasus Petition for Reconsideration at 14-15. Pegasus argues that from May 2003 to September 2003 DIRECTV actively sought to avoid public disclosure of its arrangement with Telesat concerning the 82°W.L. and 72.5° W.L. orbital positions and that these matters were thus not considered in the *Hughes/News* proceeding.

³³ We express no view as to whether DIRECTV adequately disclosed information in the *Hughes/News* proceeding, as resolution of that issue is more appropriately undertaken in connection with that proceeding. As indicated above, our action here is conditioned upon action in that proceeding.

³⁴ See Pegasus Petition to Deny STA at 5-8. Pegasus Consolidated Reply at 6-7.

³⁵ DIRECTV, Inc., *Order*, DA 04-1761, ¶¶ 13-15 (released June 23, 2004). It appears that the feasibility of these plans may have been negatively impacted by the partial failure of Telesat's Nimiq 2 satellite. *Id.* at ¶¶ 3-4 (noting the malfunction of Nimiq 2).

³⁶ Pegasus Consolidated Reply of March 10, 2004, at 6.

³⁷ Pegasus Reply and Supplemental Comments of April 5, 2004, at 12.

15. Pegasus and Telesat both participated in a proceeding initiated by Industry Canada seeking expressions of interest in developing the 72.5° W.L. orbital location. Industry Canada selected Telesat to develop that position.³⁸ Furthermore, and as indicated by Telesat, the ability to initiate service promptly, including bringing into use a Canadian ITU filing at the location by July 14, 2005, was a matter of some concern to Industry Canada.³⁹ Although Pegasus argues that the arrangements between Telesat and DIRECTV precluded any cooperative arrangement between Pegasus and Telesat,⁴⁰ nowhere does Pegasus indicate that it can provide a satellite in a timely manner that would enable Telesat to develop the 72.5° W.L. orbital location consistent with Industry Canada's goals. There is no indication that Pegasus or any other competitor of DIRECTV has undertaken to procure the physical hardware available to commence service from that location immediately, or put forward any other realistic option for commencement of service in the near future from the 72.5° W.L. orbital location.⁴¹ DIRECTV and Telesat's arrangement, and Industry Canada's action approving them, do not raise substantial concerns under these circumstances, as there is no current or reasonably foreseeable service offering that might be foreclosed. The record indicates that, absent the arrangement to move the DIRECTV 5 satellite into the 72.5° location, DBS services to either the Canadian or U.S. markets from this location would not be available.

16. With respect to Pegasus's concern that DIRECTV's arrangement may foreclose potential competitive service from the 72.5° W.L. orbital location "in perpetuity," Telesat's license from Industry Canada contemplates that DIRECTV 5 is an interim satellite, to be replaced by a new satellite, no later than December 31, 2008. Telesat's license provides that fifty percent of the new satellite's capacity will be available for "foreign broadcast needs," i.e. uses such as those provided for in the Telesat/DIRECTV contract. The license also provides that the other 50 percent of the satellite's capacity will be available for use at Telesat's discretion, consistent with Canadian needs. It is possible, therefore, that new capacity will be available to accommodate additional use as a result. In any event, we will limit the term of DIRECTV's blanket Earth station authorization to a period terminating on September 30, 2008. This date coincides with the terms of the Telesat/DIRECTV arrangement. At this time it is unclear whether, on that date, DIRECTV would need to specify a new satellite as a point of communication, and at that time we can evaluate whether technological developments, such as the deployment of more efficient spot beam satellites to provide local channel service, may facilitate additional use of the 72.5° W.L. orbital location.

17. *International Coordination/Relationship to DBS Spacing Issues.* The ITU Region 2 Plans for the BSS and associated feeder-links includes an assignment to Canada at the 72.5° W.L. orbital location. This location is 4.5 degrees removed from an assignment proposed by Mexico at the 77° W.L. orbital location. Echostar urges that we should consider the impact of operations at the 72.5° W.L. orbital location on potential operations from the 77° W.L. orbital location.⁴² They note that the spacing of DBS satellites at

³⁸ DIRECTV STA Request at Exhibit 1. Also available at [http://strategis.gc.ca/epic/internet/insmt-gst.nsf/vwapj/ignacy-e.pdf/\\$FILE/ignacy-e.pdf](http://strategis.gc.ca/epic/internet/insmt-gst.nsf/vwapj/ignacy-e.pdf/$FILE/ignacy-e.pdf).

³⁹ See Telesat Opposition, filed March 3, 2004, at 2-3.

⁴⁰ Pegasus Petition for Reconsideration at 7-8.

⁴¹ Pegasus indicated in its proposal to Industry Canada the "near impossibility" of meeting a June 2005 bringing into use deadline. See Pegasus Petition for Reconsideration at 7. The record does not include any additional information as to the date by which Pegasus proposed to initiate service, nor is there any information of which we could take official notice concerning this date. See Pegasus Development Corporation, *Response to Industry Canada's Call for Expressions of Interest in Broadcasting Satellite Orbital Positions (DGRB 002-003)*, redacted version available at [https://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/vwapj/Pegasus_031106.pdf/\\$FILE/Pegasus_031106.pdf](https://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/vwapj/Pegasus_031106.pdf/$FILE/Pegasus_031106.pdf).

⁴² See, e.g., Echostar STA Comments.

4.5 degrees is the subject of a petition for rule making filed by DIRECTV,⁴³ and of a Public Notice⁴⁴ seeking comment on technical issues related to such operations.

18. There are no co-frequency U.S. BSS assignments within 9 degrees of the 72.5° W.L. orbital location, and no current BSS operations by any country within 9 degrees of the 72.5° W.L. orbital location. Thus, while we agree that operations at the 72.5° W.L. orbital location and potential operations at the 77° W.L. orbital location may involve some common technical issues with the issues raised by proposals to operate at other orbital locations, operations at the 72.5° W.L. orbital location do not present an immediate potential for disruption or degradation of currently operating DBS service.

19. With respect to the impact of operations at the 72.5° W.L. orbital location on possible future operations at the 77° W.L. orbital location, we are not in a position to address or resolve any issues that may be presented, as this is a matter which must be resolved in the first instance by discussions between Canada and Mexico. We note that both Canada and Mexico filed modifications to the Region 2 BSS Plan in 1996, and neither administration commented on the other's filing pursuant to the ITU's procedures. In 2003, both Canada and Mexico filed further modifications, neither of which has been published for comment by the ITU. DIRECTV indicates that DIRECTV 5 can operate within the envelope created by the 1996 Canadian filing, designated CAN-BSS3.⁴⁵ DIRECTV also indicates that "unless a BSS system that is entitled to protection comes into operation, DIRECTV plans to operate at levels that exceed those notified in the CAN-BSS3 filing on a non-harmful interference basis pursuant to Article 4.4 of the ITU Radio Regulations."⁴⁶ DIRECTV indicates that these higher levels will be "fully enveloped" by Canada's 2003 filing, designated CAN-BSS6, and that "if necessary DIRECTV will be able to switch to the lower-power operations while maintaining the 24 additional markets without any service interruption to consumers." We will condition the blanket Earth station authorization consistent with these representations. Accordingly, we also reject contentions that the requested operations of DIRECTV 5 will in any way improperly limit future service from Mexican or other BSS locations.⁴⁷

20. *Confidential Documents.* Pegasus cites the need for public disclosure of the DIRECTV/Telesat agreements, 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.⁴⁸ The Protective Order specifically provided a basis for all parties to participate in the STA and blanket Earth station licensing proceedings.⁴⁹ Furthermore, substantial portions of the agreements between DIRECTV and Telesat have been released for public inspection. For these reasons we see no need to address further confidentiality issues for purposes of reaching a decision in this case.

⁴³ Petition of DIRECTV Enterprises, LLC for a Rulemaking on the Feasibility of Reduced Orbital Spacing in the U.S. Direct Broadcast Satellite Service, filed Sept. 5, 2003.

⁴⁴ Public Notice, "International Bureau Seeks Comment on Proposals to Permit Reducing Orbital Spacing Between U.S. Direct Broadcast Satellites," Report No. SPB-196 (released Dec. 16, 2003).

⁴⁵ Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC, to Thomas Tycz, Chief, Satellite Division, dated May 24, 2004, at 2.

⁴⁶ *Id.*

⁴⁷ *See, e.g.*, Echostar Blanket License Comments at 5.

⁴⁸ Pegasus Supplemental Comments at 15-18.

⁴⁹ *See Protective Order* at 2, ¶ 2.

21. *Exchange of Letters with Industry Canada.* We have exchanged letters with Industry Canada in order to ensure that there is a mutual understanding regarding the operation of the DIRECTV 5 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 DIRECTV 5 space station operations at the 72.5° W.L. orbital location will be pursuant to authorization of Telesat by Industry Canada.

22. *Disposition of the DIRECTV 5 FCC License.* DIRECTV 5 will not be operating pursuant to an FCC authorization once it begins operating at the 72.5° W.L. orbital location. Accordingly, we are terminating the DIRECTV 5 license (Call Sign Sign S2417) effective upon DIRECTV 5 reaching the 72.5° W.L. orbital location.

IV. CONCLUSION AND ORDERING CLAUSES

23. Based on the foregoing, we find that grant of DIRECTV's requests will serve the public interest by improving the quality of local channel services in 24 markets.

24. Accordingly, IT IS ORDERED, that the application of DIRECTV Enterprises, LLC File No. SAT-STA-20040107-00002 (Call Sign: S2417) is GRANTED, and DIRECTV Enterprises, LLC is authorized for a period of 180 days to relocate DIRECTV 5 to the 72.5° W.L. orbital location and to conduct space station Telemetry, Tracking and Command communications related during the movement of the satellite to the 72.5° W.L. orbital location, subject to the following conditions:

i.) DIRECTV Enterprises, LLC shall coordinate all drift orbit Telemetry, Tracking, and Control operations with other potentially affected in-orbit operators.

ii.) During relocation of the DIRECTV 5 satellite, DIRECTV Enterprises, LLC's operations shall be on a non-harmful interference basis, i.e., DIRECTV Enterprises, LLC shall not cause interference to, and shall not claim protection from interference caused to it by, any other lawfully operating satellites.

iii.) In the event that any harmful interference is caused as a result of DIRECTV Enterprises, LLC's operations during the relocation of the DIRECTV 5 satellite, DIRECTV Enterprises, LLC, shall cease operations immediately upon notification of such interference and shall inform the FCC in writing immediately of such an event.

iv.) DIRECTV Enterprises, LLC 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. IT IS FURTHER ORDERED, that, pursuant to Section 25.137 (c) of the Commission's rules, the application of DIRECTV Enterprises, LLC, File No. SES-LFS-20040112-00023, IS GRANTED, and DIRECTV Enterprises, LLC IS AUTHORIZED to use 1,000,000 receive-only Earth stations to receive transmissions in the 12.2-12.7 GHz frequency band from the DIRECTV 5 satellite at the 72.5° W.L. orbital location, which is authorized to Telesat Canada by Industry Canada, until September 30, 2008, consistent with the technical parameters specified in its application, and subject to the following conditions:

i.) This authorization is without prejudice to any action the Commission may deem appropriate, including cancellation, or adoption of additional conditions, in connection with petitions for reconsideration filed in MB Docket No. 03-124.

ii.) Operations shall be consistent with applicable coordination agreements; to the extent such agreements have not been reached, operations shall be on a non-harmful interference basis, i.e., operations of the DIRECTV 5 satellite shall not cause interference to, and shall not claim protection from, interference caused to it by any other lawfully operating satellites.

26. IT IS FURTHER ORDERED, that, effective upon the date when the DIRECTV 5 satellite reaches the 72.5° W.L. orbital location, the license for that satellite (Call Sign S2417) IS TERMINATED.

27. DIRECTV Enterprises, LLC, shall inform the Commission, through a letter to the Chief, Satellite Division, FCC, within five business days following the date on which the DIRECTV 5 satellite reaches the 72.5° W.L. orbital location.

28. DIRECTV Enterprises, LLC is afforded thirty days to decline these authorizations as conditioned. Failure to respond within this period will constitute formal acceptance of the authorizations as conditioned.

29. 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

Thomas S. Tycz
Chief, Satellite Division
International Bureau

Annex A



International Bureau

Federal Communications Commission
Washington, DC 20554

August 3, 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 5 Space Station

Dear Ms. Beaumier:

This letter is to confirm the informal understandings of the Canadian Department of Industry (Industry Canada) and the Federal Communications Commission (FCC) concerning certain technical issues involved in the operation of a Broadcasting-Satellite Service (BSS) satellite known as DirecTV 5 by DirecTV Enterprises, LLC (DirecTV) and as Nimiq 3i by Telesat Canada (Telesat), pursuant to an agreement between DirecTV and Telesat. The following explanation is derived from the agreement.

The Transaction Between DirecTV and Telesat Canada

DirecTV currently operates the DirecTV 5 satellite at the 119.3° W.L. orbital location, subject to FCC authority. Under a contract between DirecTV and Telesat Canada, DirecTV agreed to move the DirecTV 5 satellite to the 72.5° W.L. orbital location,¹ subject to the successful launch and in-orbit testing of the DirecTV 7S satellite, which has since replaced the DirecTV 5 satellite at the 119° W.L. orbital location, and subject to necessary governmental approvals. The agreement provides DirecTV with an exclusive right to use all of the capacity on the DirecTV 5 satellite at the 72.5° W.L. orbital location until at least September 30, 2008. Under the agreement, DirecTV may, under certain circumstances, move the DirecTV 5 satellite to one of its FCC licensed orbital locations, upon 5 days notice to Telesat, in the event that DirecTV 5 is needed to replace some or all of the capacity of certain DirecTV satellites due to a satellite or launch failure. Upon the exercise of certain options outlined in the agreement, operations of DirecTV 5 at the 72.5° W.L. orbital location may continue until June 30, 2013.

¹ The term "72.5° W.L. orbital location," refers to the nominal orbital position for the relevant Canadian frequency assignment 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.

The agreement contemplates that, once DirecTV 5 is at the 72.5° W.L. orbital location, it will be operated by Telesat pursuant to a separate operations agreement. DirecTV 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, which shall occur within 12 months after receipt of regulatory approvals necessary to relocate DirecTV 5 to the 72.5° W.L. orbital location.

On December 17, 2003, Industry Canada provided Telesat with an approval in principle to develop and operate a broadcast-satellite space station at the 72.5° W.L. orbital location. DirecTV has filed with the FCC a request for Special Temporary Authorization to move the DirecTV 5 satellite from its currently authorized location to the 72.5° W.L. orbital location, and a request to deploy earth stations in the United States that would receive signals from DirecTV 5, once licensed by Industry Canada for operations at the 72.5° W.L. orbital location.

The 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 5

It is my understanding that our two agencies have concurred on the following technical issues concerning the operation of DirecTV 5:

1. At the 72.5° W.L. location, the DirecTV 5 spacecraft will operate subject to Canadian authority. Because this location is a Canadian entry 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 5 satellite at the 72.5° W.L. orbital location.
2. Any operations of the DirecTV 5, other than at the 72.5° W.L. orbital location, will be subject to licensing by the FCC, including any operations as a result of equipment failure in the satellite that result in the inability to maintain the satellite within ± 0.1 degrees of its assigned position at the 72.5° W.L. orbital location.
3. Industry Canada, through the Director, Space and International Regulatory Activities, once the Canadian licensee has been informed, 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 License for the DirecTV 5 satellite.

4. DirecTV's ability to use the DirecTV 5 satellite, in the event of failure of a DirecTV satellite, within the time frame specified in the DirecTV/Telesat agreement, is a private contractual matter between the DirecTV and Telesat.
5. Industry Canada will condition the DirecTV 5/Nimiq 3i License to require Telesat to maintain, barring catastrophic failure of satellite components, the capability to de-orbit the DirecTV 5 spacecraft to an orbit consistent with ITU Recommendation S.1003-1, Environmental Protection of the Geostationary-Satellite Orbit.

The informal understandings set forth in this letter concerning operation of the DirecTV 5 satellite do not constitute a concurrence by the FCC or the U.S. Administration with any Canadian filings with the ITU Radiocommunication Bureau at the 72.5° W.L. orbital location 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 the ITU Radio Regulations, work in good faith to complete that process, insofar as necessary, in connection with the operation of the DirecTV 5 satellite at the 72.5° W.L. orbital location.

The FCC has not issued any of the authorizations that would be necessary to provide direct-to-home services to customers in the United States using the DirecTV 5 satellite at the 72.5° W.L. orbital location. The FCC has received both an application for Special Temporary Authority (STA) to relocate the DirecTV 5 satellite to the 72.5° W.L. orbital location, and an application for a blanket authorization of Earth stations seeking to receive direct-to-home transmissions in the United States from the DirecTV 5 satellite at the 72.5° orbital location. These applications will require separate action by the FCC. This exchange of letters does not constitute approval of either of these applications.

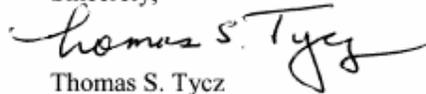
In the event of the failure of a DirecTV satellite, and upon the exercise by DirecTV of its contractual rights to move the satellite, and in the event that there are any provisions in Telesat's license from Industry Canada, or any provisions in the Canadian laws and regulations governing the telecommunications 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.

Lastly, 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 address subsequently 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 5, please confirm by return letter. Thank you.

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

AUG 04 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 August 3, 2004 setting out our informal common understandings concerning certain technical issues involved in the operation of a Broadcasting-Satellite Service (BSS) satellite known as DirecTV 5 by DirecTV Enterprises, LLC (DirecTV) and as Nimiq 3i 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. Additionally, Industry Canada acknowledges that, in the event of termination of the lease agreement owing to the failure of a DirecTV satellite, DirecTV's ability to use the DirecTV 5 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 informed, to the extent possible under the circumstances, prior to any exercise of licensing authority, or application of law or regulation by Industry Canada.

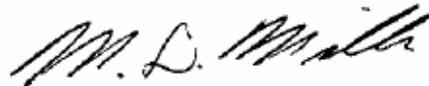
...2

The word "Canada" in a stylized, serif font with a small crown-like element above the 'a'.

- 2 -

Finally, I want to express my appreciation for the support your administration is giving to this kind of commercial arrangement to facilitate the delivery of important and valuable services in our respective countries.

Sincerely,



for Chantal Beaumier
Director, Space and International
Regulatory Activities

cc: Paul Bush, Telesat Canada