

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

In the Matter of )
DIRECTV Enterprises, LLC ) IBFS File No. SAT-MOD-20140624-00075
Application for Milestone ) Call Sign: S2712
Extension for DIRECTV RB-2 )

ORDER

Adopted: May 14, 2015

Released: May 14, 2015

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant the application of DIRECTV Enterprises, LLC (DIRECTV) for an extension, through July 31, 2015, to meet its "launch and begin operations" milestone for its RB-2 space station. As discussed below, DIRECTV has provided sufficient information to demonstrate that it will launch and bring RB-2 into operation no later than this date. Given the apparent imminent launch of RB-2, currently scheduled for May 27, 2015, we believe this extension is in the public interest and that a modification of the milestone date under Section 25.117(e) of the Commission's rules, 47 C.F.R. § 25.117(e), is justified. Finally, we find that DIRECTV has met the first three milestones applicable to RB-2: (1) enter into a binding contract; (2) complete critical design review; and (3) commence construction. We therefore reduce the remaining bond from \$3 million to \$750,000.

II. BACKGROUND

2. On July 27, 2009, the Commission granted DIRECTV authority to construct, launch and operate RB-2, a geostationary orbit 17/24 GHz Broadcasting-Satellite Service (BSS) space station to be located at the 102.825° west longitude (W.L.) orbital location. RB-2 is authorized to operate in the 17.3-17.7 GHz (space-to-Earth) and the 24.75-25.15 GHz (Earth-to-space) frequency bands. As a condition to the grant of authority for RB-2, DIRECTV was required to: (1) execute a binding contract for construction by July 27, 2010; (2) complete the critical design review by July 27, 2011; (3) commence construction by July 27, 2012; and (4) launch and begin operations by July 27, 2014. Within 30 days of

1 The RB-2 space station will be carried on DIRECTV 15, a satellite that also includes Ka-band and Direct Broadcast Satellite space stations. See DIRECTV Enterprises, LLC Application for Authority to Launch and Operate DIRECTV 15 at 103° W.L., IBFS File No. SAT-LOA-20140825-00094 (filed Aug. 25, 2014) (DIRECTV 15 Application).

2 In a separate order, we also granted DIRECTV's requests for various technical changes to the initial RB-2 application, including DIRECTV's request that RB-2 be authorized to operate at the 102.75° W.L. orbital location instead of 102.825° W.L. See DIRECTV Enterprises, LLC, IBFS File No. SAT-MOD-20140612-00066 (grant stamp, May 14, 2015);

3 See DIRECTV Enterprises, LLC, Application for Authorization to Launch and Operate DIRECTV RB-2, Order and Authorization, DA 09-1624, 24 FCC Rcd 9393, 9406 ¶ 37 (Int'l Bur. 2009) (RB-2 Order). These milestone deadlines match the requirements of Section 25.164 of the Commission's rules, 47 C.F.R. § 25.164.

the grant of its application for RB-2, DIRECTV posted a bond in the amount of \$3 million, as required by Commission rules.<sup>4</sup>

3. DIRECTV previously certified that it met the first three milestones applicable to RB-2.<sup>5</sup> Subsequently, on June 24, 2014, DIRECTV filed a request for an extension or waiver of the final “launch and begin operations” milestone.<sup>6</sup> According to DIRECTV, difficulties in acquiring travelling wave tube arrays necessitated switching to a new satellite manufacturer,<sup>7</sup> and the switch delayed completion of construction to approximately 45 days after the launch and begin operations milestone date.<sup>8</sup> In support of its milestone extension request, DIRECTV notes that it has paid 91.4 percent of all pre-launch construction payments, 90 percent of the launch services contract, and has made substantial progress in other areas.<sup>9</sup> DIRECTV also states that its launch provider, Arianespace, did not have an available launch slot until 2015.<sup>10</sup> According to DIRECTV, it has had a launch services contract in place with Arianespace for several years, but launch of RB-2 was delayed by Arianespace’s need to find a second payload for the RB-2 launch vehicle.<sup>11</sup> DIRECTV contends that switching to an alternative launch provider such as Sea Launch or International Launch Services would not have achieved an earlier launch, as both providers have suffered recent launch failures and have full launch manifests.<sup>12</sup> For these reasons, DIRECTV requests an extension of its final launch and operation milestone from July 27, 2014, until July 31, 2015.<sup>13</sup>

4. SES Americom, Inc. and Ciel Satellite Limited Partnership (Ciel) (collectively “SES”)<sup>14</sup> request that the Commission deny DIRECTV’s milestone extension request or, alternatively, withhold

---

<sup>4</sup> 47 C.F.R. § 25.165.

<sup>5</sup> See IBFS File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, and SAT-AMD-20080321-00077: Letter from William M. Wiltshire to Marlene H. Dortch, Secretary, FCC (dated July 26, 2010) (contract submission); Letter from William M. Wiltshire to Marlene H. Dortch, Secretary, FCC (dated July 27, 2011) (submission of amended contract); Letter from William M. Wiltshire to Marlene H. Dortch, Secretary, FCC (July 27, 2011) (CDR package submission); and Letter from William M. Wiltshire to Marlene H. Dortch, Secretary, FCC (dated July 27, 2012) (commence construction submission). We address these milestone showings in this Order.

<sup>6</sup> See DIRECTV Application Exhibit A.

<sup>7</sup> DIRECTV Application at 2-3.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 4. DIRECTV states that it has made substantial progress concerning in-orbit test, telemetry, tracking, and command and ground communications infrastructure, as well as progress in the development of new consumer equipment capable of receiving and processing the 17/24 GHz signals. *Id.*

<sup>10</sup> *Id.* at 5.

<sup>11</sup> DIRECTV states that requiring that each rocket launch two satellites at a time can make it difficult to find two satellites ready to launch at the same time and whose combined weight can be supported by the Ariane 5 rocket. *Id.* at 5.

<sup>12</sup> *Id.* at 6-7.

<sup>13</sup> In its original application for milestone extension, filed on June 24, 2014, DIRECTV requested a nine-month extension, up to and including April 27, 2015. DIRECTV Application at 1. On February 27, 2015, however, DIRECTV informed the Commission that, although it has maintained its place in the Arianespace launch queue, the scheduled launch date is now May 20, 2015. Consequently, DIRECTV requested that the launch and operate milestone be extended to July 15, 2015. See Letter from William M. Wiltshire to Marlene H. Dortch, Secretary, FCC (dated February 27, 2015). Due to a delay in the launch of the satellite ahead of DIRECTV in the Arianespace launch queue, the launch of RB-2 has been postponed until May 27, 2015. Consequently, DIRECTV requests that the “launch and begin operations” milestone be extended to July 31, 2015. Letter from William M. Wiltshire to Marlene H. Dortch, Secretary, FCC (dated May 5, 2015).

<sup>14</sup> Petition to Deny of SES Americom, Inc. and Ciel Satellite Limited Partnership (Sept. 2, 2014) (SES Petition).

operating authority for RB-2 until DIRECTV completes coordination with Ciel-6i, which is a Canadian-licensed space station that also operates in the 17/24 GHz BSS frequency band at the 103° W.L. orbital location.<sup>15</sup> DISH Operating LLC (DISH)<sup>16</sup> similarly requests that coordination with Ciel-6i be a condition of any milestone extension and also requests that we require that the operational parameters of RB-2 reflect the results of any such coordination agreement.<sup>17</sup>

### III. DISCUSSION

5. It is well-established that the Commission may waive its rules if there is “good cause” to do so.<sup>18</sup> Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than would strict adherence to the general rule.<sup>19</sup> Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.<sup>20</sup> The policy objective of the Commission’s milestone rules is to ensure that licensees proceed with construction and launch their satellites in a timely manner so that valuable spectrum will not be held to the exclusion of others by those who are unwilling or unable to proceed.<sup>21</sup>

6. We find that a limited waiver of the “launch and begin operations” milestone for RB-2 is warranted under the circumstances. DIRECTV has completed the physical construction of the RB-2 payload and is ready to launch the satellite in the immediate future. The satellite arrived in French Guiana on March 31, 2015, in preparation for a late May 2015 launch date.<sup>22</sup> Based on these circumstances, we find that there is sufficient evidence to demonstrate that DIRECTV is proceeding with construction and launch of the RB-2 payload and that good cause exists to partially waive the “launch and begin operations” milestone. This finding is consistent with previous instances where we have found that the imminent launch of the satellite justifies a limited waiver of the “launch and begin operations” milestone.<sup>23</sup> This waiver, however, is conditioned on launch and commencement of operations of RB-2 by July 31, 2015. Given the imminent launch of RB-2 and the documentation provided by DIRECTV, we also conclude that DIRECTV has met the first three milestones, which required that DIRECTV enter into a binding contract, complete critical design review, and commence construction.

7. In accordance with these findings, we deny SES’s petition to deny. SES contends that it is

---

<sup>15</sup> *Id.* at 19.

<sup>16</sup> Petition to Condition of DISH Operating LLC (Sept. 2, 2014) (DISH Petition).

<sup>17</sup> The operational parameters regarding RB-2 will be addressed in a separate Order. *See* n. 2, *supra*.

<sup>18</sup> *See* Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3 (2001). *See also* *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (“*WAIT Radio*”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>19</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>21</sup> *TerreStar Networks, Inc. Request for Milestone Extension*, Memorandum Opinion and Order, 22 FCC Rcd 17698, 17699-17770, ¶ 6 (Int’l Bur. rel. Oct. 3, 2007) (*TerreStar*).

<sup>22</sup> *Mission Update - The mission pace continues: DIRECTV-15 arrives for Ariespace’s heavy-lift Ariane 5 flight in May*, available at <http://www.arianespace.com/news-mission-update/2015/1275.asp> (dated Apr. 1, 2015).

<sup>23</sup> *See, e.g., DIRECTV Enterprises, LLC*, IBFS File No. SAT-MOD-20140624-00077 (grant stamp, Nov. 5, 2014); *Orbcomm License Corp.*, IBFS File Nos. SAT-MOD-20111021-00207, SAT-AMD-20140116-00006 (grant stamp, Mar. 26, 2014); *EchoStar Satellite Corporation Application for Modification of Authorization to Construct, Launch, and Operate a Ku-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, DA 03-2560, 18 FCC Rcd 15875, 15877-78, ¶ 9 (Int’l Bur. 2003).

bad policy to allow a licensee to evade its milestone obligations simply because the licensee continued to make construction and launch payments,<sup>24</sup> and that to delay RB-2's operational date would be a "fundamental [compromise] of the milestone framework [because it fails to ensure] timely availability of service to the public."<sup>25</sup> We disagree on both points. DIRECTV has not only made construction and launch payments, but has also completed physical construction of the RB-2 payload and has delivered the payload for imminent launch. In light of the imminent launch of the payload, there is concrete evidence to support our finding that the spectrum resources used by RB-2 will be available for service to the public in a timely manner. Accordingly, the facts presented here do not support either of the policy concerns raised by SES.

8. Finally, DISH's request that we condition any milestone extension on coordination of RB-2 with the Canadian Ciel-6i space station at 103° W.L. is unnecessary. The authorization for RB-2 is already subject to a condition that addresses the obligations of international coordination under the procedures of the International Telecommunication Union (ITU).<sup>26</sup> Consequently, there is no reason to impose additional conditions regarding coordination of the RB-2 payload, and we deny DISH's request to do so.

#### IV. ORDERING CLAUSES

9. IT IS ORDERED that the application of DIRECTV Enterprises, LLC, IBFS File No. SAT-MOD-20140624-00075, for an extension through July 31, 2015 to meet its "launch and begin operations" milestone for the DIRECTV RB-2 space station, authorized to operate at the 102.825° W.L. orbital location and provide Broadcasting-Satellite Service using the 17.3-17.7 GHz (space-to-Earth) and 24.75-25.15 GHz (Earth-to-space) frequency bands, IS GRANTED.

10. IT IS FURTHER ORDERED that the Petition to Deny filed by SES Americom, Inc. and Ciel Satellite Limited Partnership IS DENIED for the reasons stated herein.

11. IT IS FURTHER ORDERED that the Petition to Condition filed by DISH Operating LLC IS DENIED for the reasons stated herein.

12. IT IS FURTHER ORDERED that DIRECTV Enterprises, LLC may reduce the amount of the bond posted for the RB-2 space station to \$750,000, as provided in the *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, IB Docket No. 02-34, 18 FCC Rcd 10760 (2003); *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Order on Reconsideration and Fifth Report and Order, IB Docket No. 02-34, 19 FCC Rcd 12637 (2004).

---

<sup>24</sup> SES Petition at 21.

<sup>25</sup> *Id.* at 16.

<sup>26</sup> See *RB-2*, 24 FCC Rcd at 9407, ¶ 41.

13. This action is taken under delegated authority pursuant to Sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, and 0.261.

FEDERAL COMMUNICATIONS COMMISSION

Jose P. Albuquerque  
Chief, Satellite Division  
International Bureau