

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

In the Matter of

COMPREHENSIVE REVIEW OF LICENSING AND
OPERATING RULES FOR SATELLITE SERVICES

MB Docket No. 12-267

COMMENTS OF DIRECTV, LLC

DIRECTV, LLC (“DIRECTV”) hereby responds to the Further Notice of Proposed Rulemaking (“*FNPRM*”) in the above referenced proceeding.¹ The *FNPRM* contains a large number of proposals to update and streamline the Commission’s regulation under Part 25 for the operation of geostationary orbit, Fixed-Satellite Services space stations using non-planned frequency bands (“GSO FSS space stations”). In these comments, DIRECTV focuses on two areas.

The first is a small subset of interrelated issues concerning (1) the submission of filings to the International Telecommunication Union (“ITU”), (2) the submission of applications for space station authorizations to the Commission, and (3) the bond and performance milestone regimes applicable to parties that make either or both types of submissions. As discussed below, DIRECTV believes that with appropriate amendment of its current rules, the Commission could establish a regime that eliminates a significant international disadvantage under which U.S.

¹ See *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, 29 FCC Rcd. 12116 (2014) (“*FNPRM*”). DIRECTV also participated in the preparation of comments by the Satellite Industry Association, which cover a comprehensive array of issues in this proceeding, and fully supports those comments.

applicants currently operate while also establishing a more flexible regime for assuring that valuable spectrum/orbital resources are put to productive use in a timely manner.

The second area covers several aspects of the Commission's rules (including the two-degree spacing policy) that help define a stable interference environment for satellite operations. DIRECTV generally supports the Commission's proposals, but believes that a few modifications are necessary to optimize their effectiveness.

I. THE COMMISSION SHOULD ENABLE U.S. OPERATORS TO MAKE ITU SUBMISSIONS AND SECURE A PROVISIONAL PLACE IN THE PROCESSING QUEUE BEFORE FILING FOR A SPACE STATION LICENSE

As recognized in the *FNPRM*, obtaining international recognition in accordance with the ITU's regulations is generally a critical prerequisite for successful satellite network operation.² The first step in this process is the filing of an Advance Publication of Information ("API"), which provides only a very general description of a proposed satellite network and does not incur an ITU cost recovery fee. The next step is a Coordination Request ("CR/C"), which is "receivable" between six months and two years after the associated API filing but may be submitted to the ITU simultaneously with an API filing. The date of receipt of the CR/C establishes the "protection date" of a satellite network, which is the basis of international coordination priority.

At present, the Commission will file an API (and associated CR/C) only after a party has filed an application for a space station authorization. As DIRECTV explained in its prior comments, this places U.S. operators at a significant disadvantage for two reasons. First, it effectively requires them to apply to the Commission for authority for operation in particular frequency bands at particular orbital locations before developments that could affect the

² See *FNPRM*, ¶ 6.

availability of those frequencies at those locations have fully unfolded. Second, it requires U.S. operators to disclose their plans publicly before an API is filed, which enables competitors filing through foreign administrations to monitor the Commission's space station applications and submit a new filing (or modify an existing one) at the ITU before the U.S. has submitted anything. Such "claim jumping" gives foreign operators the ability to secure ITU priority over their U.S.-licensed counterparts.

Adopting a policy under which satellite operators are given the option to start the ITU process prior to submitting a space station application would address both of these disadvantages. Yet as the Commission recognizes, the question then arises as to the effect of the international filing on the domestic licensing process. Moreover, as the Commission recognizes,³ this issue is also intertwined with other Commission proposals for modification of the bond and performance milestone requirements applicable to GSO FSS space station authorizations. DIRECTV submits that all of these issues should be evaluated and addressed as a whole to craft a regime that both maximizes opportunities and creates proper incentives throughout the lifecycle of a satellite project.

At present, U.S. applicants must divulge their plans publicly before the Commission files anything on their behalf at the ITU. Yet even if the Commission changes its policy and begins to submit APIs prior to submission of an application for a space station authorization, that would not fully address the problem because a CR/C cannot become effective until six months after an API has been filed. During that time, a foreign operator with a previously-filed API within ± 6 degrees of a targeted orbital location would be able to file a CR/C that would enjoy ITU date

³ See *id.* at ¶ 34.

priority over the U.S. filing. This six-month lag is a critical factor that the Commission's rules must take into account.

Several other considerations should also inform the Commission's evaluation of a processing regime. For example, the filing of an API with the ITU does not incur any cost recovery obligations, nor does it establish any international priority. Accordingly, the mere filing of an API should not enable a party to block the development of a portion of the orbital arc by another U.S. operator for an extended period of time. By contrast, the filing of a CR/C incurs a cost recovery obligation of tens of thousands of Swiss Francs and establishes international date priority at a specified frequency band and orbital location. By the time a party is willing and able to make such a commitment, it should also be willing and able to file a space station application with the Commission, which entails an application fee of over \$100,000. If the party is not willing or able to demonstrate in this way that it is ready to move forward, it should not be able to block other parties that are ready to do so. Implementing these general principles, DIRECTV proposes that the Commission adopt a regime along the following lines:

- Parties may submit an API to the Commission at any time, subject to the limitation set forth below. The Commission will submit each API to the ITU without assessing whether it conflicts, or could potentially conflict, with an earlier-filed API.
 - Consistent with the current limits in Section 25.159 of the Commission's rules, no party may have a combination of more than five (1) APIs, pending applications, and licensed but unbuilt authorizations for GSO-like space stations in a particular frequency band, or (2) APIs, pending applications, and licensed but unbuilt authorizations for non-GSO-like space stations in a particular frequency band.
- The first party to submit an API to the Commission establishes a provisional place in the space station processing queue with respect to the covered frequency band(s) for orbital locations within ± 6 degrees of the orbital location specified in the API.
 - If that party files a CR/C with the Commission within six months of the date the API is submitted to the ITU, and within 30 days thereafter files a related space station application with the Commission, its place in the Commission's processing queue will

be perfected.

- If that party does not file a CR/C with the Commission within six months of the date its API is submitted to the ITU, or if it fails to file a space station application with the Commission within 30 days thereafter, it loses its claim to priority in the Commission's processing queue. Thereafter, should the next in line party with a previously-submitted API submit a CR/C to the Commission and within 30 days thereafter file a related space station application, that party takes priority in the Commission's processing queue, and so on. (Note that a party does not automatically forego the ability to gain priority in the queue by failing to file a CR/C within six months after submitting an API; rather, it can still achieve priority in the processing queue if it is the first to submit a CR/C.)
- Even after a party perfects its priority in the queue by filing a CR/C and associated space station application, another party that has filed an API may submit a CR/C, which the Commission will forward to the ITU without assessing whether it conflicts, or could potentially conflict, with the earlier-filed CR/C. The party with the later-filed CR/C, however, incurs the cost recovery fee at its own risk, and does not gain any additional rights in the domestic process should the Commission make the relevant spectrum at the earlier-licensed orbital location available for application at a later date.

The process set forth above addresses the six month lag between ITU receipt of an API and CR/C and also eliminates the need for requiring any party to post a bond in connection with an API or CR/C filing. Filing an API only gives a party provisional priority for a limited, six-month period. If the party fails to follow up within that time, its exclusive priority is lost. If the party does follow up with a CR/C and application, it thereby embarks upon the current process for licensing, including the requirement to post a performance bond. Thus, only a party granted a space station license should be required to post a bond.

In this regard, DIRECTV believes that the current bond structure established under Section 25.165(a) is set at an appropriate level and should be continued. DIRECTV does not support the sort of automatic and ongoing adjustment for inflation/deflation proposed by the Commission,⁴ as this would require licensees to adjust their bonds repeatedly during the course of developing their systems and could cause confusion as well. At a minimum, the Commission

⁴ See *id.* at ¶ 31.

should specify a bond amount at the time it issues a space station license, and there should be no adjustment to that amount thereafter (except as the result of satisfying milestone requirements).

Similarly, any party granted a space station license should be given a milestone schedule for implementing its system. Here again, DIRECTV believes that the milestones set forth in Section 25.164 continue to be appropriate – but that compliance should be adjusted slightly. Specifically, as proposed by the Commission, the Critical Design Review (“CDR”) would be the only interim milestone that a licensee would have to meet prior to launch, with failure to do so rendering the license null and void automatically.⁵ The Commission should also, however, retain the other interim milestones (contracting and commencement of construction), but make them optional such that a licensee may, but is not required to, demonstrate compliance. A successful demonstration of compliance, however, would result in reduction of the amount of the bond in accordance with Section 25.165(d). Thus, a party could make its own choice whether to forego the burden of a milestone showing and remain liable for a greater bond amount while developing its system, or to undertake submission of such a showing and thereby reduce its potential liability.

II. THE COMMISSION SHOULD ADOPT RULE CHANGES THAT PROMOTE A STABLE FSS INTERFERENCE ENVIRONMENT

DIRECTV agrees with the Commission’s assessment that the two-degree spacing policy continues to be useful and that eliminating it altogether would not serve the public interest. As the Commission notes, the policy of routinely licensing operation conforming to predetermined technical criteria for two-degree spacing compatibility, without requiring coordination or interference analysis, facilitates expeditious application processing and reduces cost and

⁵ *Id.*

paperwork burdens for applicants willing to operate within the constraints of those criteria.⁶ DIRECTV supports the proposals to remove the routine limits on the power spectral density or power flux-density of downlink transmission in the conventional Ku-band and 20/30 GHz bands from Sections 25.134, 25.138, and 25.212 and insert them in Section 25.140 as coordination triggers for space station applicants and licensees, and to allow applicants to provide certifications in lieu of an interference analysis when routine licensing levels are met or other parameters are successfully coordinated.⁷

Drawing on a proposal by Intelsat, the Commission has requested comment on whether it should require a new entrant to coordinate co-frequency, co-coverage operation with a U.S.-licensed operator that has been providing non-two-degree-compliant GSO FSS services without causing unacceptable interference, consistently with any previous coordination required by the ITU Radio Regulations and Commission rules or policies.⁸ DIRECTV does not support this proposal. Every Commission licensee should be entitled to operate at the parameters allowed under the Commission's two-degree spacing policy. Otherwise, the advantages of expeditious processing and reduced costs discussed above could be significantly reduced. By the same token, an operator that has coordinated the use of parameters in excess of those allowed under the two-degree spacing policy with existing operators/licensees should not have to modify its operations to protect a later-licensed, two-degree compliant space station. Rather, it should be able to continue to operate at coordinated levels – though going forward, it would have to accept any additional interference caused by operations from a two-degree compliant system.

⁶ See *id.* at ¶ 44.

⁷ *Id.* at ¶¶ 49, 51.

⁸ *Id.* at ¶ 47.

Moreover, in order to enable subsequent applicants to assess the potential interference environment, DIRECTV would support the Commission's proposal to require prior notification to the Commission of the details of nonconforming operation in a specific frequency range and coverage area as a prerequisite for continuation of such operation.⁹ Such prior notification information would, of course, have to be made publicly available for the benefit of future applicants.

The Commission has also proposed to allow fleet management maneuvers under Section 25.118(e) of the Commission's rules without prior approval so long as a space station is located no more than 0.15° away from another location previously assigned to the same licensee.¹⁰ The Commission would require that any such relocated space station must continue to operate within the parameters of all applicable coordination agreements, which would ensure ongoing protection for operators licensed by other administrations. However, because U.S. operators typically rely upon the Commission's two-degree spacing rules rather than coordination, this requirement might not protect U.S. operators at adjacent orbital locations. Accordingly, the Commission must provide an opportunity for any U.S.-licensed operator located within 2 degrees of a proposed fleet management relocation the opportunity to review and comment before the space station is moved.

CONCLUSION

DIRECTV applauds the Commission's ongoing efforts to rationalize and streamline its space station licensing regime. The proposals discussed herein include long-overdue steps to enhance the competitive position of U.S. operators, as well as rules that promote a stable

⁹ *Id.*

¹⁰ *Id.* at ¶ 153.

interference environment for all GSO FSS systems. Accordingly, DIRECTV urges the Commission to adopt these proposals.

Respectfully submitted,

William M. Wiltshire
Michael Nilsson
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, NW
Suite 800
Washington, DC 20036
(202) 730-1300

Counsel for DIRECTV, LLC

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/s/

Stacy R. Fuller
Vice President, Regulatory Affairs
DIRECTV, LLC
901 F Street, NW, Suite 600
Washington, DC 20004
(202) 383-6300