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Federal Communications Commission
Office of the Secretary

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June 23, 2005

VIA HAND DELIVERY

Kevin J. Martin
Chairman
Federal Communication Commission
445 12th Street, SW
Washington, DC 20554

Re: IB Docket No. 05-72 (Applications for consent to assignment of 11 frequencies at 61.5° W. L. from Rainbow L.L.C. to EchoStar Satellite L.L.C.)

Dear Chairman Martin:

This letter is written on behalf of Dominion Satellite Video, Inc. ("Dominion") to request that the Commission, in ruling on the above matter, take no action which is inconsistent with or has an adverse effect on its ruling in its December 3, 2004 "Auction 52 Order"¹ that eligibility to apply for the two vacant frequencies at 61.5° W. L. be confined to applicants which do not now operate satellites at orbital locations capable of serving the entire 48 contiguous states plus Alaska and Hawaii. Dominion intends to make application for the two vacant frequencies at 61.5° W. L., and is now in negotiating with satellite manufactures and operators for the construction of a new satellite to be located at 61.5°.

Dominion is the licensee of eight frequencies at 61.5° W. L. The remaining frequencies at 61.5° W. L. are now licensed to EchoStar Satellite L.L.C. ("EchoStar") and Rainbow L.L.C. ("Rainbow"), each being licensed by the Federal Communications Commission ("FCC") for 11 frequencies at that orbital location. EchoStar operates satellites serving the 48 states plus Alaska and Hawaii; Rainbow does not. On January 28, 2005, applications were filed by EchoStar and Rainbow for the proposed assignment of Rainbow's eleven frequencies at 61.5° W. L. to EchoStar (IB Docket No. 05-72). The applications remain pending before the FCC.

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List A B C D E

¹ "In the Matter of Auction of Direct Broadcast Satellite Licenses," 34 CR 662 (2004).

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There are thirty two (32) frequencies at each orbital location, including 61.5° W. L. As stated above, thirty (30) of the frequencies at 61.5° W. L. have been authorized. There are two remaining frequencies which the FCC intends to auction.² In the Auction 52 Order, the FCC restricted eligibility to participate in the auction for the two unassigned channels at 61.5° W. L. The FCC barred the direct broadcast satellite licensees who currently operate satellites at orbital locations capable of serving the entire 48 contiguous states plus Alaska and Hawaii from participating in the auction. The ineligible licensees are prohibited from acquiring, owning, or controlling the license for a period beginning with the release date of the Order and ending four years after the award of the initial license. Dominion is qualified to participate in the auction of the two channels since it does not have spectrum at any other orbital location; whereas, EchoStar and DirecTV are not eligible since they each have orbital locations capable of serving the entire 50 states. The FCC recognizes that there may be other qualified individuals or entities that may choose to bid..

The FCC imposed the eligibility requirements because it found that these were the only two remaining channels to provide service to the Eastern continental United States, and the two channels could be important for increasing the number of options or choices available to subscribers of DBS or other multichannel video programming services. The FCC stated that such increased choice could yield important public interest benefits, including greater price competition, the development of additional new service, and technological innovation thus promoting the goals of Section 309 (j)(3)(B) of the Act.

On May 25, 2005, EchoStar filed a Petition for Reconsideration of the FCC's establishment of the eligibility requirements for participation in the auction of the two channels at 61.5° W. L. Dominion intends to respond to the EchoStar's petition in support of the FCC's prior findings on the need to enhance competition. The need for more competition is made more acute by Rainbow's discontinuance of service.

In light of the foregoing, the Commission is respectfully requested to take no action in the proceeding on the Rainbow/EchoStar applications, which adversely affect its original eligibility determination, cited above, in the proceeding on the two channels at 61.5° W. L.

Very truly yours,



Marvin Rosenberg
Counsel for Dominion Satellite Video, Inc.

² On June 21, 2005, the United States Court of Appeals (DC) released an opinion remanding to the FCC an action involving the FCC's authority to auction DBS spectrum. Northpoint Technology, Ltd and Compass Systems, Inc. vs. FCC, Case Nos. 04-1052 and 04-1053 (June 21, 2005).

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cc: Commissioner Kathleen Abernathy
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Donald Abelson, International Bureau Chief
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