

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

In the Matter of)	
)	
Application of DIRECTV Enterprises, LLC to)	
Amend its Pending Application for a 17/24 GHz)	File No. SAT-AMD-20080916-00188
BSS Authorization at the 107° W.L. Orbital)	Call Sign: S2242
Location)	

MEMORANDUM OPINION AND ORDER

Adopted: July 27, 2009

Released: July 28, 2009

By the Acting Chief, International Bureau:

I. INTRODUCTION

1. With this Order, we deny the request of DIRECTV Enterprises, LLC (DIRECTV) to substitute Pegasus Development DBS Corporation (Pegasus) as the applicant in DIRECTV's pending application for authority to construct, launch and operate a geostationary 17/24 GHz broadcasting-satellite service (17/24 GHz BSS) space station at the 107° W.L. orbital location. We find that DIRECTV's request is inconsistent with Section 25.158(c)¹ of the Commission's rules that prohibits an applicant from transferring, assigning or otherwise permitting any other entity to assume its place in the satellite application licensing queue. Although we find no reason to assume that DIRECTV and Pegasus designed their proposal for speculative purposes,² we find that granting a waiver of Section 25.158(c) would nevertheless undermine the purpose of that rule.

2. Concurrently with this Order, the International Bureau (Bureau) is granting DIRECTV's application to operate a 17/24 GHz BSS space station at the 102.825° W.L. orbital location. Our actions in this Order and the concurrently adopted Order will clear the way for action on other applications for 17/24 GHz BSS satellites that were pending at the time that the Commission adopted service rules for this service.³ Together, we anticipate that these actions will usher in a new generation of satellite services to the public, providing a competitive mix of local and domestic video, audio, data, video-on-demand and multi-media services to U.S. consumers. In many cases, these services will complement existing Direct Broadcast Satellite (DBS) services.

¹ 47 C.F.R. § 25.158(c).

² Section 25.158(c) is one of several rules adopted to discourage parties from applying for satellite licenses for speculative purposes. See Amendment of the Commission's Space Station Licensing Rules and Policies and Mitigation of Orbital Debris, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10851 (para. 242) (2003) (*Space Station Reform Order*).

³ See Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band, *Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 06-123, 22 FCC Rcd 8842 (2007) (*17/24 GHz BSS Report and Order*), petitions for reconsideration pending.

II. BACKGROUND

3. The Commission adopted licensing and service rules for the 17/24 GHz broadcasting-satellite service in 2007.⁴ At that time, DIRECTV, Pegasus, Intelsat North America (Intelsat) and EchoStar Corporation⁵ (EchoStar) each had pending applications for 17/24 GHz BSS space station authorizations.⁶ In the *17/24 GHz BSS Report and Order*, the Commission directed the International Bureau to invite the applicants to amend their pending applications to conform to the new service rules.⁷ The Commission decided in the *17/24 GHz BSS Report and Order* that such amended applications would be treated as if received at the same time for purposes of the Commission's "first-come, first-served" application licensing queue.⁸ As a consequence, where more than one applicant filed for the same orbital location in the conforming amendments (either at an "Appendix F" location or at an offset associated with that location), the available spectrum at the orbital location would be divided equally among the applicants pursuant to Section 25.158(d) of the Commission's rules.⁹ In deciding to process the pending applications in this manner, the Commission recognized that, where the spectrum will be divided, the authorizations issued under this procedure might not be exactly what the applicants expected.¹⁰

4. All four applicants filed conforming amendments that were placed on public notice as accepted for filing. As a result of the amendments, there were multiple applications filed at or offset from four different Appendix F locations.¹¹ Specifically, Intelsat and Pegasus have pending applications at the nominal 91° W.L. orbital location;¹² Intelsat and DIRECTV have pending applications at the nominal 99°

⁴ 17/24 GHz BSS Report and Order, 22 FCC Rcd 8842; Order on Reconsideration, 22 FCC Rcd 17951 (2007) (Order on Reconsideration), petitions for reconsideration pending.

⁵ EchoStar's applications were originally filed by EchoStar Satellite Operating Corporation, but as a result of a pro forma transfer, EchoStar Corporation is now the applicant.

⁶ *17/24 GHz BSS Report and Order* at Appendix E – List of Pending Applications.

⁷ *17/24 GHz BSS Report and Order*, 22 FCC Rcd at 8901 (para. 145).

⁸ *17/24 GHz BSS Report and Order*, 22 FCC Rcd at 8900 (para. 143). The opportunity to make such major amendments to conform a pending application with no effect on the status in the licensing queue is limited to applications pending at the time the *17/24 GHz BSS Report and Order* was issued. New applications in the service are subject to all the "first-come, first-served licensing" procedures for GSO-like space station applications.

⁹ *17/24 GHz BSS Report and Order*, 22 FCC Rcd at 8900 (para. 143), and at Appendix F. The *17/24 GHz BSS Report and Order* included a framework in which 17/24 GHz BSS space stations would operate at orbital locations spaced at four degree intervals, as set forth in Appendix F (known as Appendix F locations). Section 25.158(d) provides, in pertinent part, that in the event that two or more applications are granted at a particular orbital location "the available bandwidth at the orbital location or locations in question will be divided equally among those licensees." 47 C.F.R. § 25.158(d)(4).

¹⁰ *17/24 GHz BSS Report and Order*, 22 FCC Rcd at 8900 (para. 144).

¹¹ See Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00535 (rel. July 2, 2008); Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00537 (rel. July 11, 2008) (corrections). Not all conformed applications resulted in situations requiring spectrum to be divided among applicants. The Commission has granted some of these less complex applications, e.g., the Pegasus application at the 115° W.L. orbital location granted on Dec. 15, 2008, the EchoStar application at the 62.15° WL orbital location granted on March 13, 2009, the EchoStar application at the 75° WL orbital location granted on March 18, 2009, the Intelsat application at the 95.15° W.L. orbital location on May 26, 2009, and the Intelsat application at the 122.9° W.L. orbital location on June 15, 2009. On June 24, 2009, Intelsat surrendered its authorization for the 95.15° W.L. orbital location and on July 14, 2009, Intelsat surrendered its authorization for the 122.9° W.L. orbital location.

¹² Intelsat North America LLC Application for 17/24 GHz BSS Space Station at the 90.9° W.L. Orbital Location (Call Sign S2662), IBFS File Nos. SAT-LOA-20050210-00031, SAT-AMD-20051118-00238, SAT-AMD-20080114-00008, SAT-AMD-20080617-00123, SAT-AMD-20080701-00138; Pegasus Development DBS

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W.L. orbital location;¹³ DIRECTV, EchoStar and Pegasus have applications pending at the 107° W.L. orbital location;¹⁴ and EchoStar and DIRECTV have pending applications at the nominal 111° W.L. location. No petitions to deny were filed against these applications, but in a comment filed on all pending 17/24 GHz BSS applications, Pegasus sought clarification that “pre-licensing exchanges of application spectrum interests among or between current 17/24 GHz applicants are permissible under the FCC’s rules.”¹⁵ Pegasus also sought clarification that, as a result of any such exchanges, the Commission would not impose more than a single \$3 million dollar bond requirement for a satellite system at a single orbital location.¹⁶

5. Subsequently, in September 2008, DIRECTV requested authority to further amend its pending application at the 107° W.L. orbital location to substitute Pegasus as the applicant and to conform the application to the technical parameters submitted by Pegasus for its proposed space station (Call Sign S2699) at the same orbital location. If granted, Pegasus would be the applicant in two of the three pending applications at the 107° W.L. orbital location. DIRECTV stated that its proposed amendment was necessary to effectuate an agreement (the Three-Party Agreement) between and among DIRECTV, Pegasus and Intelsat regarding their applications at the 91° W.L., 99° W.L. and 107° W.L. orbital locations. The Three-Party Agreement was not provided to the Commission. As described by DIRECTV, the Three-Party Agreement provides that each of the three parties will forgo one orbital location in exchange for obtaining more spectrum at another orbital location.¹⁷ DIRECTV describes its amendment as the first step in the process. If the amendment were granted, Pegasus would then withdraw its application at the 91° W.L. orbital location, leaving Intelsat as the sole applicant at that location. At the same time, Intelsat would withdraw its application at the 99° W.L. orbital location, leaving DIRECTV as the sole applicant at that location.

6. As part of its amendment, DIRECTV requests that the Commission treat Pegasus as if it had filed two of the three pending applications for 17/24 GHz BSS band frequencies at the 107° W.L. orbital location for purposes of dividing the available bandwidth at that location.¹⁸ Consequently, DIRECTV asserts that Pegasus would be granted two-thirds of the spectrum at the 107° W.L. orbital location and

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Corporation Application for 17/24 GHz BSS Space Station at the 91° W.L. Orbital Location (Call Sign S2698), IBFS File Nos. SAT-LOA-20060412-00042, SAT-AMD-20080114-00025, SAT-AMD-20080118-00029.

¹³ Intelsat North America LLC Application for 17/24 GHz BSS Space Station at the 99.1° W.L. Orbital Location (Call Sign S2660), IBFS File Nos. SAT-LOA-20050210-00029, SAT-AMD-20051118-00240, SAT-AMD-20080114-00012, SAT-AMD-20080617-00125, SAT-AMD-20080701-00135; DIRECTV Enterprises, LLC Application for 17/24 GHz BSS Space Station at the 99.175° W.L. Orbital Location (Call Sign S2711), IBFS File Nos. SAT-LOA-20060908-00099, SAT-AMD-20080114-00013, SAT-AMD-20080321-00076.

¹⁴ DIRECTV Enterprises, LLC Application for 17/24 GHz BSS Space Station at the 107° W.L. Orbital Location (Call Sign S2242), IBFS File Nos. SAT-LOA-19970605-00049, SAT-AMD-20051118-00226, SAT-AMD-20080114-00015, SAT-AMD-20080321-00078; EchoStar Satellite Operating L.L.C. Application for 17/24 GHz BSS Space Station at the 107° W.L. Orbital Location (Call Sign S2442), IBFS File Nos. SAT-LOA-2002-328-00052, SAT-AMD-20051118-00245, SAT-AMD-20080114-00020, SAT-AMD-20080213-00043; Pegasus Development DBS Corporation Application for 17/24 GHz BSS Space Station at the 107° W.L. Orbital Location (Call Sign S2699), IBFS File Nos. SAT-LOA-20060412-00043, SAT-AMD-20080114-00024.

¹⁵ Pegasus Development DBS Corporation Comments (on all pending 17/24 GHz BSS applications), filed August 1, 2008 (Pegasus Comments) at 2.

¹⁶ Pegasus Comments at 3.

¹⁷ DIRECTV Enterprises, LLC Application for Amendment, IBFS File No. SAT-AMD-20080916-00188 (DIRECTV Amendment) at 2. The Three-Party Agreement is not included as part of the amendment but merely explained by DIRECTV in its narrative.

¹⁸ DIRECTV Amendment at 4.

EchoStar would be granted one-third. Pegasus, however, does not propose to operate two space stations at this orbital location. Rather, Pegasus would operate a single space station at the 107° W.L. orbital location, using two-thirds of the available spectrum at that location. For purposes of determining the number of bonds required, however, DIRECTV requests that the Commission treat Pegasus as only filing one application at the 107° W.L. orbital location and thus only requiring one \$3 million dollar bond. To implement its amendment, DIRECTV also seeks “contingent partial waiver requests” of Commission rules prohibiting transfer of a place in the satellite application licensing queue,¹⁹ requiring the posting of a bond²⁰ and designating the application a “major” amendment, if it is determined by the Commission to be substantial pursuant to Section 309 of the Communications Act.²¹ Pegasus and Intelsat submitted letters in support of the amendment immediately after it was filed.²² The amendment was placed on public notice on September 26, 2008.²³

7. EchoStar objects to DIRECTV’s amendment, asserting that the proposed assignment raises legal and policy problems and requires rule waivers without support.²⁴ EchoStar argues that the assignment of a place in a satellite application queue is prohibited by Section 25.158(c) of the Commission’s rules. EchoStar further notes that the Three-Party Agreement is not comprehensive, because it excludes EchoStar, one of the applicants at an orbital location covered by the Three-Party Agreement.²⁵ EchoStar asserts that the failure to attempt to negotiate a global solution among all four original applicants undercuts DIRECTV’s position that waiver is in the public interest. In the event the Commission grants DIRECTV’s amendment, EchoStar argues that the spectrum at the 107° W.L. orbital location should be divided equally among applicants at the time of grant (*i.e.*, one-half to EchoStar and one-half to Pegasus), instead of by the number of applications originally filed, as proposed by DIRECTV (*i.e.*, one-third to EchoStar and two-thirds to Pegasus).²⁶

8. In response to EchoStar’s comments, DIRECTV notes that the Commission has urged applicants to resolve mutual exclusivity in whole or in part.²⁷ DIRECTV argues that EchoStar concedes that consolidating 17/24 GHz BSS applications could serve the public interest, but faults the Three-Party Agreement for not including all parties. DIRECTV asserts that the Three-Party Agreement minimizes mutual exclusivity, even if it does not avoid it entirely. DIRECTV further argues that EchoStar remains in line to get exactly the same authorization it would be eligible to receive in the absence of the Three-Party Agreement.

¹⁹ DIRECTV Amendment at Waiver Requests at 1 (requesting partial waiver of 47 C.F.R. § 25.158(c)).

²⁰ DIRECTV Amendment at Waiver Requests at 2 (requesting partial waiver of 47 C.F.R. § 25.165).

²¹ DIRECTV Amendment at Waiver Requests at 3 (requesting partial waiver of 47 C.F.R. § 25.116).

²² Sept. 17, 2008 letter from Marshall W. Pagon, President and Chief Executive Officer of Pegasus Development DBS Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission; Sept. 23, 2008 letter from Philip Spector, Secretary, Intelsat North America LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission.

²³ Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-556 (rel. Sept. 26, 2008).

²⁴ EchoStar Reply Comments (filed Nov. 24, 2008).

²⁵ EchoStar Comments (filed Oct. 27, 2008).

²⁶ EchoStar Reply Comments at 3.

²⁷ Response of DIRECTV Enterprises, LLC (filed Nov. 10, 2008)(citing *17/24 GHz BSS Report and Order*, 22 FCC Rcd at 8901 (para. 145)). Pegasus (Nov. 10, 2008) and Intelsat (Nov. 12, 2008) filed letters in support of DIRECTV’s Response.

III. DISCUSSION

A. Applicability of Section 25.158(c)

9. In the *Space Station Reform Order*, the Commission adopted a first-come, first-served licensing queue for applications for geostationary-satellite orbit (GSO) space stations. Under that process, the Commission considers applications in the order they are filed, and grants each application if the applicant is qualified, and the application does not conflict with any previously-licensed space station or previously-filed application.²⁸ As part of this licensing process, the Commission also adopted a package of safeguards designed to discourage speculative applications and to ensure that licensees remain committed and able to proceed with system implementation in a timely manner.²⁹ As one of the safeguards adopted, the Commission prohibited applicants from assigning their place in the queue to other entities. In adopting this measure in Section 25.158(c) of the rules, the Commission balanced the public interest against speculation with a need to allow licenses to be transferred to the party who would put it to the highest valued use. The Commission explained that without the prohibition against sale of a place in the space station applications queue, it is possible that some parties would file satellite applications simply to obtain a place in a queue that they could attempt to sell to another party more willing or able to implement the proposed satellite system.³⁰ The Commission concluded that the public interest would be best served by requiring parties to demonstrate their qualifications and obtain licenses prior to offering any spectrum rights for sale.³¹ The Commission found that this requirement increases the likelihood that the applicant actually intends to construct, launch and operate the satellite system for which it has applied.

10. The transfer proposed by DIRECTV in this amendment is prohibited by Section 25.158(c) of our rules. This section provides that “[a]n applicant for a GSO-like satellite system license is not allowed to transfer, assign, or otherwise permit any other entity to assume its place in any queue.”³² DIRECTV is proposing to substitute Pegasus in DIRECTV’s place in the licensing queue, which is precluded by this rule. DIRECTV does not argue that the rule can be read in any other manner. Instead, DIRECTV argues that the Commission’s discussion of another policy in another section of the *Space Station Reform Order* provides an exception to the prohibition.³³ Specifically, DIRECTV observes that in the *Space Station Reform Order*, the Commission eliminated the rule that classified transfer of control applications as “major amendments” that would drop the application to the bottom of the processing queue. DIRECTV notes that, in eliminating this rule, the Commission stated that it did not intend the first-come, first-served processing procedure to deter “legitimate business transactions.”³⁴ From that statement, DIRECTV

²⁸ *Space Station Reform Order*, 18 FCC Rcd 10805 (paras. 108-10).

²⁹ *Space Station Reform Order*, 18 FCC Rcd at 10846-52 (paras. 226-44).

³⁰ *Space Station Reform Order*, 18 FCC Rcd at 10851 (paras. 240-43).

³¹ While the Commission prohibited the sale of an individual license application, in the same order the Commission decided to remove the restriction on the sale of individual satellite licenses. The prohibition on the sale of “bare” satellite licenses for profit was known as the anti-trafficking policy. See *Space Station Reform Order*, 18 FCC Rcd at 10839-46 (paras. 209-25).

³² 47 C.F.R. § 25.158(c). See *Space Station Reform Order*, 18 FCC Rcd at 10851-52 (paras. 240-43) (the section of the *Space Station Reform Order* relating to Section 25.158(c) is contained in a section entitled “Safeguards against Frivolous or Speculative Applications,” Subsection 5, “Selling Place in Queue”).

³³ 47 C.F.R. § 25.116(b)(3).

³⁴ DIRECTV Amendment at Waiver Requests at 1 (citing *Space Station Reform Order*, 18 FCC Rcd at 10814 (para 140)).

asserts that because its proposed amendment is part of a “legitimate business transaction,” the prohibition in Section 25.158(c) should not apply in this instance.³⁵

11. The Commission eliminated the rule classifying transfer of control applications as “major amendments” because it did not want to discourage certain larger transactions, such as the acquisition of one entity by another entity, by requiring an application involved in the transaction to be moved to the end of the first-come, first-served licensing queue.³⁶ Being at the end of the licensing queue may mean denial of an application if an application at the front of the queue seeks the same frequency bands and orbital location. Thus, the Commission eliminated the classification of certain amendments as major amendments (which would force them to the bottom of the licensing queue) because such a classification might deter these larger transactions.

12. The substitution of Pegasus for DIRECTV is not part of a larger transaction envisioned by the Commission when it eliminated the rule classifying transfer of control applications as “major amendments.” Rather, DIRECTV’s substitution request is driven by an interest in preserving status in the first-come, first-served licensing processing queue. Without retaining this status, DIRECTV cannot claim one-third of the spectrum at the 107° W.L. orbital location for the benefit of Pegasus. In other words, the request to substitute Pegasus for DIRECTV as the applicant is an arrangement that would not have occurred but for the first-come, first-served licensing process. This is not the type of transaction the Commission contemplated in eliminating the major amendment rule for transfer of control applications. If the Commission had intended to facilitate substitution of applications as contemplated by DIRECTV it would not have adopted, in the same order, the Section 25.158(c) prohibition against applicants transferring their places in the queue.³⁷

13. The Three-Party Agreement was negotiated and designed to preserve and trade in each party’s status in the first-come, first-served licensing queue. Therefore, the request to substitute Pegasus for DIRECTV is the type of agreement that Section 25.158(c) was designed to prohibit. Thus, we find that an exception here would swallow the rule.

B. Waiver of the Rule

14. In light of our determination that the rule prohibits the substitution of DIRECTV for Pegasus, we review whether DIRECTV has demonstrated an adequate basis for waiver of Section 25.158(c). Section 1.3 of the Commission’s rules authorizes the Commission to waive its rules for “good cause shown.”³⁸ Waiver is appropriate only if special circumstances warrant a deviation from the general rule and if such deviation would better serve the public interest than would strict adherence to the general rule.³⁹ Generally, the Commission may grant a waiver of its rules in a particular case only if the relief

³⁵ DIRECTV Amendment at Waiver Requests at 1.

³⁶ The rule eliminated by the Commission read: “(3) If the amendment specifies a substantial change in beneficial ownership or control (de jure or de facto) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act, provided however, that the change would not be considered major where it merely amends an application to reflect a change in ownership or control of the station that had been previously approved by the Commission.” 47 C.F.R. § 25.116(b)(3) (2002 edition).

³⁷ *Space Station Reform Order*, 18 FCC Rcd at 10814 (paras. 139-40).

³⁸ See Section 1.3 of the Commission’s rules, 47 C.F.R § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*); *Northeast Cellular Telephone Co.*, 897 F.2d 1164 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁹ *Northeast Cellular*, 897 F.2d at 1166.

requested would not undermine the policy objective of the rule in question and would otherwise serve the public interest.⁴⁰

15. In support of its waiver request, DIRECTV argues that the parties have co-equal status as first in the queue for this orbital location, and states that there will be no exchange of financial consideration between the parties to the Three-Party Agreement. DIRECTV suggests the agreement would increase the incentive and ability of each party to build its system at its respective orbital location, while serving a Commission goal to minimize mutually exclusive situations.⁴¹ DIRECTV also argues that its amendment would enable Pegasus to combine spectrum resources from two applications at a single orbital location, making it a more viable competitor, capturing efficiencies of scale.⁴²

16. In adopting the prohibition on transfer of a place in the satellite applications queue, the Commission explained that the rule prevents parties from filing satellite applications simply to sell to another party.⁴³ In proposing this rule, the Commission noted that allowing the sale of a place in the licensing queue would create “a large loophole in our safeguards against speculative satellite applications.”⁴⁴ Requiring all applicants to fully demonstrate their qualifications before they are permitted to trade spectrum rights increases the likelihood that these and all future applicants intend to construct the satellite system for which they have applied, and decreases the likelihood that applications will be filed for speculation.⁴⁵ Even if the parties to the Three-Party Agreement have equal status, the Commission has no way to be assured, at the application stage, that all the applicants are ready, willing and able to proceed with their proposed systems. Nor can the Commission be certain that none of the parties has maintained its application at a given orbital location simply to preserve a negotiating position. The absence of monetary consideration is irrelevant to these concerns.

17. Moreover, we find that waiver of the rule to permit transfer of DIRECTV’s place in the satellite queue holds the potential for entangling the Commission in the particulars of the Three-Party Agreement. DIRECTV, Pegasus and Intelsat have explained the interrelated concessions that the parties have made to induce each other to agree, all of which are material considerations for the agreement. Subsequent events, including but not limited to Commission action on the pending applications related to the Three-Party Agreement, could affect these considerations. This, in turn, could lead Pegasus, DIRECTV and/or Intelsat to request the Commission to unwind our action in some way. Thus, this amendment raises the risk of additional proceedings and delay in the licensing of this band and the provision of service to consumers.

18. The Commission’s interest here is to grant licenses to those ready, willing and able to proceed. While we recognize there may be advantages to the applicants as a result of the efficiencies offered by the Three-Party Agreement, allowing the substitution of Pegasus for DIRECTV at the application stage would, on balance, encourage speculation contrary to the intent of Section 25.158(c). Further, while the Commission encouraged applicants to avoid mutual exclusivity when filing conforming amendments to their 17/24 GHz BSS applications, this was not meant to encourage applicants to maintain

⁴⁰ *WAIT Radio*, 418 F.2d at 1157.

⁴¹ DIRECTV Amendment at Waiver Requests at 1-2.

⁴² DIRECTV Amendment at Waiver Requests at 2.

⁴³ *Space Station Reform Order*, 18 FCC Rcd at 10851 (para. 242).

⁴⁴ Amendment of the Commission’s Space Station Licensing Rules and Policies, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3847 at 3866-3866 (para. 53) (2002).

⁴⁵ *Space Station Reform Order*, 18 FCC Rcd at 10851-52 (para. 243).

applications on file for purposes of negotiation. Accordingly, because the proposed substitution would undermine the policy objective of the rule, we deny the waiver request.⁴⁶

C. Other Requests

19. Our decision renders moot DIRECTV's related request that Pegasus receive two-thirds of the available spectrum at the 107° W.L. orbital location. Nevertheless, because we anticipate prompt action on the applications related to Three-Party Agreement, we take the opportunity to remind all of the applicants how available spectrum will be divided at shared locations. Section 25.158(d)(4) states that the available spectrum at a shared location is to be divided equally among the licensees at the location.⁴⁷ Removing DIRECTV as an applicant at this location through either an amendment to substitute Pegasus for DIRECTV or the withdrawal of DIRECTV's application would leave two applicants at the 107° W.L. orbital location – Pegasus and EchoStar. If both applicants are found qualified, Section 25.158(d)(4) requires the spectrum to be divided equally between the two licensees.⁴⁸

20. In light of our decision that the substitution of Pegasus for DIRECTV in this application is prohibited by the Commission's rules and that a waiver is not warranted, we need not reach DIRECTV's "contingent partial waiver requests" of Commission rules related to the posting of a bond and the designation of the application as a major amendment. Our decision here also fully addresses Pegasus's request for clarification regarding the assignment of applications in the processing queue and renders moot Pegasus's related request for clarification regarding the amount of the bond for satellites licensed in the context of pre-licensing spectrum exchanges.

III. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that the Application for Amendment filed by DIRECTV Enterprises, LLC, IBFS File No. SAT-AMD-20080916-00188, IS DENIED.

22. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106, or applications for review under Section 1.115 of the Commissions rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

John V. Giusti
Acting Chief,
International Bureau

⁴⁶ See *WAIT Radio*, 418 F.2d at 1159. EchoStar has pointed out that the Three-Party Agreement does not include all four parties with pending 17/24 GHz BSS applications. But even had there been universal agreement among all affected applicants, we would still be reluctant to approve a pre-licensing agreement for assignment of applications among the applicants, since this might encourage speculative applications in the future. While we deny DIRECTV's request, we note that parties are still at liberty to withdraw any pending application that they do not intend to pursue.

⁴⁷ 47 C.F.R. § 25.158(d)(4). See also *Order on Reconsideration*, 22 FCC Rcd at 17962-63 (para. 33).

⁴⁸ Finally, we note that DIRECTV did not request a waiver of Section 25.158(d)(4), nor did it demonstrate how an inequitable distribution of spectrum between the two licensees would serve the public interest.