

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:25-cv-3311-SKC-SBP

AMERICAN TOWERS LLC,
SPECTRASITE COMMUNICATIONS, LLC,
and INSITE WIRELESS GROUP, LLC,

Plaintiffs,

v.

DISH WIRELESS L.L.C.,

Defendant.

PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

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**CERTIFICATION REGARDING USE OF
GENERATIVE ARTIFICIAL INTELLIGENCE**

Undersigned counsel certifies that no portion of this filing was drafted by artificial intelligence.

Pursuant to Fed. R. Civ. P. 12(c), plaintiffs American Towers LLC, SpectraSite Communications, LLC, and InSite Wireless Group, LLC (collectively, “American Tower”) move this Court for judgment on the pleadings on their claim for a declaratory judgment against DISH Wireless L.L.C. (“DISH”).

PRELIMINARY STATEMENT

This declaratory judgment action arises out of DISH’s contrived efforts to evade its clear contractual obligations to American Tower, including its obligation to make ██████████ in payments for the use of cell tower facilities that it leases from American Tower to operate its Boost Mobile wireless communications business. DISH purports to be excused from those obligations based on the common law doctrine of “frustration of purpose,” which, ██████████, is “a narrow contract doctrine reserved only for truly cataclysmic or unforeseen circumstances” not contemplated by the parties at the time of contracting. *Exch. Listing, LLC v. Inspira Techs., Ltd.*, 661 F. Supp. 3d 134, 150 (S.D.N.Y. 2023).

But no such “cataclysmic or unforeseen circumstances” exist here. To the contrary, DISH’s owner, the EchoStar Corporation (“EchoStar”), made the strategic and voluntary business judgment to enter into certain transactions that DISH now claims reduce its need for leased tower space. In August and September 2025, EchoStar entered into highly lucrative and profitable agreements with AT&T Corporation (“AT&T”) and Space Exploration Technologies Corporation (“SpaceX”) to sell certain spectrum licenses—licenses from the Federal Communications

Commission (“FCC”) that Boost Mobile utilizes to provide wireless service to customers—for \$40 billion (the “Transactions”). EchoStar has touted the Transactions as a savvy business decision that will leave it “cash rich” and enable DISH to pivot Boost Mobile’s business and make it “way more competitive.”

Following the Transactions, DISH delivered a notice to American Tower (the “Notice”) claiming to be excused from the parties’ multi-tower lease contract, the Strategic Collocation Agreement (“SCA”), on the purported grounds that the Transactions were compelled by the FCC, “unforeseeable,” and thus frustrated the purpose of the SCA. But in actuality, *no one* has compelled the transactions. DISH admits as much in its Answer to the Complaint, which identifies no court or FCC order or any other legal requirement that EchoStar sell the spectrum. In any event, that DISH might lose access to the spectrum was entirely foreseeable to the parties

[REDACTED]

[REDACTED]. Nor has DISH lost access to all Boost Mobile-related spectrum following the Transactions; in fact, in its notice to American Tower, it has stated that it wishes to continue operations at certain of American Tower’s sites.

Accordingly, DISH’s attempt to evade its contractual obligations fails as a matter of law for several independent reasons. **First**, the predicate—that EchoStar was “forced” to sell spectrum—is false on the face of the pleadings: there is no court or government order requiring DISH, EchoStar, or any affiliates to relinquish

spectrum. As New York law makes clear, a voluntary business decision—here, EchoStar’s decision to sell spectrum for billions of dollars in support of its new business strategy—provides no excuse for DISH’s noncompliance with the SCA.

Second, even had EchoStar been forced to sell its spectrum, DISH’s claim that the Transactions were supposedly the result of “unforeseeable actions” is refuted by

[REDACTED]

[REDACTED]

[REDACTED]. Indeed, DISH Network Corporation’s (“DISH Network”) public disclosures confirm that DISH understood prior to entering the SCA

[REDACTED]. In short, the parties understood and

[REDACTED]. Thus, the actions that DISH claims have now frustrated the purpose of the SCA were foreseeable, which forecloses any claim of frustration under New York law.

Third, DISH admits that the purpose of the SCA has not been frustrated because DISH is seeking to maintain operations at certain American Tower sites.

In sum, DISH is trying to shift the costs that it [REDACTED] onto a long-standing and generous partner. This tactic fails on the face of the pleadings, and judgment should be granted in favor of American Tower.

FACTUAL BACKGROUND¹

The Parties. DISH is a wireless carrier through its Boost Mobile brand and leases cell towers nationwide from American Tower. Compl. ¶¶33, 37; Ans. ¶¶34, 37.

The Boost Mobile Buildout. In 2019, DISH entered the wireless market to build a nationwide 5G network. Compl. ¶31; Ans. ¶31. To achieve this goal, DISH's then-ultimate-parent, DISH Network, acquired a portfolio of spectrum licenses and made public commitments to the FCC regarding the buildout of its network. Compl. ¶¶31-32; Ans. ¶¶31, 56; ██████████. DISH needed to lease space on cell towers to deploy that spectrum, stating that it was “tremendously important” to secure “strong tower partners.” Compl. ¶¶34-35; Ans. ¶¶34-35. DISH Network also publicly acknowledged in its SEC filings that there was no guarantee it would meet buildout milestones or FCC requirements, that the spectrum licenses were “subject to . . . revocation,” and that the FCC could “take . . . actions that would adversely affect [its] business prospects.” DISH Network Corp., 2019 Annual Report (“Form 10-K”) at 66, <https://ir.echostar.com/static-files/620391c6-7330-4cbb-8aa6-04c2182f5a06>.²

¹ The factual background is drawn from the pleadings, which are attached for the Court's convenience as Exhibits 1 & 2, hereto. DISH's numerous boilerplate denials and artful averments that do not specifically refute the Complaint's recitation of any SCA provision or relevant public statement need not be accepted as true. *See, e.g., Goodrich v. Alterra Mountain Co.*, 2021 WL 2633326, at *3 (D. Colo. June 25, 2021) (allegations in pleading “do not overcome contradictory” contractual provisions).

² The Court can take judicial notice of publicly available government filings. *See Kurtz v. Vail Corp.*, 511 F. Supp. 3d 1185, 1191-92 (D. Colo. 2021).

American Tower and DISH Enter into the SCA and [REDACTED]

[REDACTED] On March [REDACTED], 2021, American Tower and DISH entered into the SCA. Compl. ¶38; Ex. A (SCA) [REDACTED]; Ans. ¶38. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fully aware of the risks associated with the planned buildout, [REDACTED]

DISH Merges with and Transfers Spectrum to EchoStar, and then EchoStar Becomes the Subject of FCC Inquiry. After executing the SCA, DISH's 5G buildout fell behind its milestone commitments to the FCC. Compl. ¶¶53-55; Ans. ¶54. On August 8, 2023, DISH agreed to merge with EchoStar. Compl. ¶55; Ans. ¶55. In connection with the merger, DISH Network Corporation voluntarily transferred to EchoStar billions of dollars worth of spectrum licenses. Compl. ¶56; Ans. ¶56. In May 2025, the FCC initiated an inquiry regarding EchoStar's spectrum

3

[REDACTED]

utilization. Compl. ¶57; Ans. ¶57. In response, EchoStar stated publicly that any FCC action to revoke or modify its licenses would be “unlawful, unconstitutional, discriminatory, and utterly baseless.” Compl. ¶58.; Ans. ¶58.

DISH and EchoStar Enter into the Transactions and Try to Evade the SCA. On August 26, 2025, EchoStar announced an agreement to sell certain spectrum licenses to AT&T for \$23 billion, and on September 8 announced an agreement to sell additional spectrum licenses to SpaceX for \$17 billion. Compl. ¶¶60-61; Ans. ¶¶60-61. It is undisputed that neither the FCC nor any court issued an order requiring EchoStar to divest the spectrum or otherwise enter into the Transactions; in fact, its CEO told the market that EchoStar would have “w[o]n the battle” if litigation with the FCC had occurred. Compl. ¶¶62-63; Ans. ¶62-63.⁴ EchoStar also stated the Transactions—set to close in mid-2026—will leave it “cash-rich” and enable DISH to make Boost Mobile “way more competitive.” Compl. ¶¶62, 64, 72; Ans. ¶¶62, 64, 72.

On September 24, 2025, DISH delivered a notice to American Tower claiming that the FCC inquiry and EchoStar’s decision to sell spectrum were “unforeseeable” events that “frustrated the principal purpose and completely destroyed the value” of

⁴ Indeed, as recently as last week, EchoStar confirmed in a judicially-noticeable public filing with the FCC that EchoStar was not compelled to enter into the Transactions, stating that it entered the Transactions “[d]ue to severe uncertainty” over “*potential* [FCC] investigations and forfeitures.” Letter from Jeffrey H. Blum, EchoStar to Marlene H. Dortch, Secretary, FCC (Dec. 3, 2025), https://e-assets.contentstack.com/v3/assets/blt23eb5bbc4124baa6/blt1647f13a161e6118/693309fb8fc4b4cbf81bbfec/EchoStar_Dec_3_ex_parte.pdf (emphasis added).

the SCA, seeking to evade the [REDACTED] in rent it will owe American Tower from [REDACTED]. Compl. ¶¶5, 67, Ex. B; Ans. ¶¶5, 67. But DISH's Notice also stated that DISH "needs to continue to operate" at certain tower facilities and invited discussions regarding "continued performance" under the SCA. Compl. Ex. B. American Tower promptly rejected DISH's efforts to evade its contractual obligations, along with its claim that DISH's performance is somehow excused by a voluntary business decision. Compl. ¶74, Ex. C; Ans. ¶74.

LEGAL STANDARD

A motion for judgment on the pleadings under Rule 12(c) "is designed to dispose of cases where material facts are not in dispute and judgment on the merits can be rendered based on the content of the pleadings and any facts of which the court will take judicial notice." *Hamilton v. Cunningham*, 880 F. Supp. 1407, 1410 (D. Colo. 1995). The Rule 12(b)(6) motion standard of review also governs a motion under Rule 12(c), and thus the pleadings must be viewed in the most favorable light to the non-moving party. *See Atl. Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138, 1160 (10th Cir. 2000). However, the Court is only required to accept well-pleaded allegations as true—not allegations about a contract that are contradicted by the contract's terms. *See Goodrich*, 2021 WL 2633326, at *3 ("[A]llegations in a [pleading] 'do not overcome contradictory statements in the text of a contract' under consideration.").

Courts have repeatedly recognized that a claim for a declaratory judgment on a contract is “particularly appropriate for review under a 12(c) motion, as [12(c)] motions . . . can be used to obtain declaratory judgments where the parties’ only dispute is the proper interpretation of contractual terms.” *CX Reinsurance Co. v. Camden Mgmt. Servs., LLC*, 2014 WL 5510914, at *1 (D. Md. Oct. 30, 2014) (citation omitted).⁵ “If the contract is unambiguous, the Court may award judgment on the pleadings, assuming no ‘material’ facts are in dispute.” *28th Highline Assocs., L.L.C. v. Roache*, 2019 WL 917208, at *6 (S.D.N.Y. Feb. 25, 2019), *aff’d*, 826 F. App’x 70 (2d Cir. 2020).

ARGUMENT

The only issue presented by this Motion—and this entire case—is whether the Transactions frustrated the purpose of the SCA, such that DISH is excused from its obligations. Courts applying New York law almost always reject the frustration defense, which is “a narrow contract doctrine reserved only for truly cataclysmic or unforeseen circumstances,” *Exch. Listing, LLC*, 661 F. Supp. 3d at 150, and only where a party has been “**completely** deprived of the benefit of its bargain,” *Gap, Inc.*

⁵ See also *A.R. Wilfley & Sons, Inc. v. Fed. Ins. Co.*, 2025 WL 1158355, at *14-15 (D. Colo. Apr. 21, 2025) (granting declaratory relief on 12(c) motion); *UMB Bank, Nat’l Ass’n v. Airplanes Ltd.*, 260 F. Supp. 3d 384, 393 (S.D.N.Y. 2017) (“a motion for judgment on the pleadings can be particularly appropriate in breach of contract cases involving legal interpretations of the obligations of the parties”) (citation omitted); *SKS Invs. Ltd v. Gilman Metals Co.*, 2013 WL 249099, at *2-3 (D. Colo. Jan. 23, 2013) (granting plaintiff’s 12(c) motion notwithstanding defendant’s impossibility defense).

v. 170 Broadway Retail Owner, LLC, 195 A.D.3d 575, 577 (N.Y. App. Div. 2021) (emphasis added).

Here, there are three independent reasons why DISH's defense fails on the face of the pleadings [REDACTED]. **First**, a party cannot rely on a voluntary business decision as a basis to excuse its obligations under the frustration doctrine, as DISH tries to do here. **Second**, even if EchoStar were forced to enter into the Transactions, the potential for DISH to lose access to the underlying spectrum was entirely foreseeable to both parties [REDACTED]. **Third**, DISH admits that the purpose of the SCA has not been frustrated because it seeks to maintain operations at certain American Tower sites.

I. DISH CANNOT RELY ON A VOLUNTARY AND STRATEGIC BUSINESS DECISION TO ESCAPE ITS OBLIGATIONS

It is well-settled that the frustration of purpose defense is unavailable to a party where the purpose of the contract was allegedly frustrated by a voluntary “business decision.” *407 E. 61st Garage, Inc. v. Savoy Fifth Ave. Corp.*, 244 N.E.2d 37, 42 (N.Y. 1968). Indeed, as New York courts reaffirmed repeatedly throughout the COVID-19 pandemic, this principle holds true even where the voluntary business decision was made in response to government shutdown orders that interrupted the operations of and caused significant adverse financial consequences to the party seeking to be excused. *See, e.g., Gap Inc. v. Ponte Gadea New York LLC*, 524 F. Supp. 3d 224, 235-36 (S.D.N.Y. 2021) (frustration unavailable due to “business decision to close” store following government shutdown order) (collecting cases).

Here, there is no government or court order or any other legal requirement that EchoStar enter the Transactions or otherwise sell the spectrum.⁶ Moreover, EchoStar has touted the Transactions as a savvy business decision that will leave it “cash-rich” and make Boost Mobile “way more competitive.” Compl. ¶¶15-17. Accordingly, DISH cannot rely on the Transactions to escape its contractual obligations. *See Williamsburg Climbing Gym Co. v. Ronit Realty LLC*, 2022 WL 43753, at *3 (E.D.N.Y. Jan. 5, 2022) (rejecting frustration defense where tenant’s parent “could have adjusted its business model” for tenant to make use of leased premises following COVID-19 but terminated lease instead); *Housman v. Media Tech. Corp.*, 1996 WL 66121, at *1, *4 (S.D.N.Y. Feb. 14, 1996) (defendant not excused from contract that it “no longer require[d]” after voluntarily entering separate transaction).

II. **DISH’S LOSS OF SPECTRUM WAS BOTH FORESEEABLE AND**

Even if there were a legitimate factual dispute over whether EchoStar was forced to sell spectrum, DISH’s contrived claim that the Transactions were the result of “unforeseeable actions” [REDACTED]

[REDACTED]. As detailed above, the frustration doctrine is only available in exceedingly

⁶ In its Answer, DISH tries to concoct a factual dispute by conclusorily denying that EchoStar was *not* ordered by any court or the FCC to enter the Transactions or dispose of its spectrum. But DISH identifies no such order because none exists, and DISH could not aver otherwise in a manner consistent with Federal Rule 11. *See* n.4, *supra*. Confirming that no such order exists, DISH instead avers that the FCC “communicated . . . its intent to terminate the licenses and authorizations related to the relevant spectrum if EchoStar [] did not divest them.” Ans. ¶62.

[REDACTED]

At bottom, [REDACTED]

[REDACTED]

[REDACTED] Thus, the frustration defense is unavailable to DISH as a matter of law. *See A + E Television Networks, LLC*, 2016 WL 8136110, at *14-15 (frustration defense unavailable where parties “contemplate[d] and contract[ed] for the risk of loss”); *170 Broadway*, 195 A.D.3d at 577 (defense unavailable where parties expressly contemplated and contracted for risks related to use of premises and agreed to limited rent abatements in certain circumstances).

Foreseeable Even Prior to SCA. Indeed, [REDACTED]

[REDACTED]

[REDACTED] In its SEC filings, DISH Network

told the market before entering the SCA that there was no guarantee that it would meet Boost Mobile network buildout milestones or FCC requirements and expressly warned investors that the spectrum licenses could be revoked. Form 10-K at 66.

In short, because all of the events that DISH claims to have transpired were foreseeable to DISH and American Tower, DISH cannot avail itself of the frustration defense. *See Ctr. for Specialty Care, Inc. v. CSC Acquisition I, LLC*, 185 A.D.3d 34, 42-43 (N.Y. App. Div. 2020) (collecting cases); *Durst Pyramid LLC v. Silver Cinemas Acquisition Co.*, 222 A.D.3d 431, 432 (N.Y. App. Div. 2023) (same).

III. THERE HAS NOT BEEN “COMPLETE” DESTRUCTION OF THE SCA’S PURPOSE

Under New York law, frustration of purpose excuses performance only where “a change in circumstances makes one party’s performance virtually worthless to the other, frustrating [its] purpose in making the contract.” *Shmaltz Brewing Co., LLC v. Dog Cart Mgmt. LLC*, 163 N.Y.S. 3d 659, 663 (N.Y. App. Div. 2022). Thus, the defense is only available where a party has been “**completely** deprived of the benefit of its bargain.” *170 Broadway*, 195 A.D.3d at 577 (emphasis added).

DISH admits it has not been completely deprived here. Rather, in its Notice, DISH stated that it intends to “continue to operate certain Tower Facilities” and invited discussions regarding “continued performance” under the SCA. Compl. Ex. B at 2.⁷ And EchoStar has made it clear that, after the Transactions, it will be “cash-

⁷ Indeed, EchoStar has not sold all of the spectrum licenses that were transferred to it by DISH Network. *See* Compl. ¶¶56, 60-61; Ans. ¶¶56, 60-61.

rich,” and Boost Mobile will be “way more competitive.” Thus, it is undisputed that the Transactions have not “deprived [DISH] of all business under the” SCA. *A + E Television Networks, LLC*, 2016 WL 8136110, at *13; *see also CW A&P Mamaroneck LLC v. PFM WC-1, LLC*, 162 N.Y.S.3d 924, at *4-5 (N.Y. Sup. Ct. 2022) (collecting cases); *Ponte Gadea*, 524 F. Supp. 3d at 236 (frustration not available even if government order makes contract “unprofitable and more onerous”).

IV. DISH’S OTHER DEFENSES FAIL AS A MATTER OF LAW

DISH’s Answer also asserts six affirmative defenses in addition to frustration of purpose: four are derivative of the frustration defense and should be rejected for the same reasons, and the other two also fail as a matter of law.⁸

CONCLUSION

For all of these reasons, judgment should be entered in American Tower’s favor.

⁸ Impossibility and impracticability defenses (Aff. Def. No. 2), like frustration of purpose (Aff. Def. No. 4), require “unforeseeability.” *Gander Mountain Co.*, F. Supp. 2d at 362. Force majeure (Aff. Def. No. 3) fails for the reasons described in Section II, above. “Failure of consideration” (Aff. Def. No. 5) is not available because, as discussed in Section III, above, DISH “has continued to receive the consideration promised under the [SCA]—retail premises for its operations.” *Ponte Gadea*, 524 F. Supp. 3d at 238. “Contrary to reasonable expectations” (Aff. Def. No. 6) is not a valid affirmative defense and is directly contradicted for all of the reasons described in Section II above:

Failure to state a claim (Aff. Def. No. 1) is not an affirmative defense, and as set forth herein, American Tower has not only stated a claim but is entitled to judgment on it. Failure to mitigate damages (Aff. Def. No. 7) is unavailable where, as here, a plaintiff seeking a declaratory judgment on a contract “neither alleges nor seeks any such additional damages.” *Funicular Funds, LP v. Pioneer Merger Corp.*, 2023 WL 7182055, at *3 (S.D.N.Y. Nov. 1, 2023).

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Respectfully submitted,

/s/ Heather Carson Perkins

Heather Carson Perkins
FAEGRE DRINKER BIDDLE & REATH
LLP

1144 Fifteenth Street, Suite 3400

Denver, CO 80202

(303) 607-3500

heather.perkins@faegredrinker.com

David B. Hennes

Andrew S. Todres

ROPES & GRAY LLP

1211 Sixth Avenue

New York, NY 10036

(212) 596-9000

david.hennes@ropesgray.com

andrew.todres@ropesgray.com

Dominique R. Rioux

ROPES & GRAY LLP

800 Boylston Street

Prudential Tower

Boston, MA 02199

(617) 951-7000

dominique.rioux@ropesgray.com

*Attorneys for Plaintiffs American Towers
LLC, SpectraSite Communications, LLC, and
InSite Wireless Group, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2025, a true and correct copy of the foregoing document was e-filed and served through the CM/ECF system which will serve notice on all counsel of record.

/s/Heather Carson Perkins

Heather Carson Perkins