

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

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In the Matter of)	
)	
ECHOSTAR BSS CORPORATION)	
)	File No. SAT-O/A-2021_____
Application for Authority to Operate)	
EchoStar 23 as an In-Orbit Spare and Activate)	
Its Communications Payload at 109.9° W.L.)	
as Needed)	
)	

REQUEST FOR PARTIAL FEE WAIVER

EchoStar BSS Corporation (together with its affiliates, “DISH”) respectfully requests a partial waiver of the application fee for authority to operate EchoStar 23 as an in-orbit spare at 109.9° W.L. The Commission has recently revised its fee schedule, reducing the application fee for authority to operate a space station from \$136,930 to \$3,555.¹ The International Bureau Filing System, however, does not reflect the new Commission-approved fee, necessitating a waiver so that DISH may pay the new fee.²

I. BACKGROUND

In the RAY BAUM’S Act of 2018, Congress directed the Commission to adopt a schedule of application fees to recover the costs to process applications.³ Prior to the enactment

¹ 47 C.F.R. § 1.1107; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules, *Report and Order*, 35 FCC Rcd. 15089, 15091 ¶ 5 (2020) (“*Fees Order*”).

² DISH is not seeking a full waiver of the filing fee. It is merely asking that the Commission waive the requirement that it pay the old fee; DISH will pay the new fee, \$3,555, upon direction of the Commission regarding how to pay the fee.

³ *Fees Order*, 35 FCC Rcd. at 15091 ¶ 5.

of the RAY BAUM'S Act, the Commission could only modify the schedule of fees to biannual adjustments based on the Consumer Price Index.⁴ The RAY BAUM'S Act modified the Commission's authority to permit the Commission to assess fees based on the "costs of the Commission to process applications."⁵

On December 29, 2020, the Commission released the *Fees Order* amending the schedule of application fees.⁶ In the *Fees Order*, the Commission set the fee for the "Application for Authority to Operate, per satellite" at \$3,555.⁷ Prior to this amendment, the fee had been \$136,930.⁸ The Commission drastically reduced the fee due to its estimation that the process for reviewing an application to construct, deploy, and operate a GSO to be just \$3,555 given the typical staff review for such applications.⁹

⁴ *Id.* at 15090 ¶ 4.

⁵ 47 U.S.C. 158(a).

⁶ *See generally Fees Order.*

⁷ *Id.* at 15148 ¶ 180. DISH is seeking authority to operate a space station that is already in orbit as a U.S. licensed space station. Before the amendment to the rules, there was no category for this type of activity. *See* Amendment of the Schedule of Applications Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules, *Notice of Proposed Rulemaking*, 36 FCC Rcd. 1618, 1669 ¶ 188 (2020) ("*Fees NPRM*"). It likely would have been covered under the category for authorization to construct deploy and operate a GSO system, which had an application fee of \$136,930. IBFS currently only offers an application fee code for authority to operate as BNY, which triggers the \$136,930 application fee.

⁸ *See* 47 C.F.R. § 1.1107(8) (2020).

⁹ *Fees NPRM*, 36 FCC Rcd. at 1669 ¶ 187 ("We estimate that the Commission's resources in processing an application to construct, deploy, and operate a GSO consist of the following: industry analyst handling the application intake, attorney determining acceptability for filing, engineer determining acceptability for filing, industry analyst releasing the accepted for filing public notice, Policy Branch chief first-level supervision, and Engineering Branch chief first-level supervision. Our estimate is that this process involves \$3,555 in costs.").

When it released the *Fees Order*, the Commission determined that it was required to notify Congress at least 90 days before the changes could become effective.¹⁰ The Commission though, directed the Office of Managing Director to provide notification to Congress “upon release of the Report and Order.”¹¹ As a result, the notification period for Congress ended on March 29, 2021.

On March 19, 2021, the Federal Register published the report adopting the new fees.¹² This publication set the effective date for the amendments as April 19, 2021.¹³ The Federal Register publication, though, stated that “Sections 1.1102, 1.1103, 1.1104, 1.1105, 1.1106, 1.1107, and 1.1109 will not take effect until the requisite notice has been provided to Congress, the FCC’s information technology systems and internal procedures have been updated, and the Commission publishes notice(s) in the Federal Register announcing the effective date of such rules.”¹⁴ For the sections not listed, the rule changes became effective on April 19, 2021.¹⁵ To date, the Commission has not released a notice in the Federal Register establishing that the new application fees are effective. The rules, though, list the application fee as \$3,555.¹⁶ And the update to IBFS and publication in the Federal Register could happen at any time.

¹⁰ *Fees Order*, 35 FCC Rcd. at 15153-54 ¶ 192.

¹¹ *Id.*

¹² Schedule of Application Fees of the Commission’s Rules, 88 Fed. Reg. 15026 (Mar. 19, 2021) (“*Federal Register Fees Order*”).

¹³ *Id.*

¹⁴ *Id.* at 156061.

¹⁵ If the Commission were to take a conservative approach (which would contradict the language of the *Fees Order*) and interpret the Congressional notification period as starting with the Federal Register publication, the 90-day period would end on June 17, 2021.

¹⁶ 47 C.F.R. § 1.1107; *see also Federal Register Fees Order*, 88 Fed. Reg. at 15065 (amending 47 C.F.R. § 1.1107).

II. STANDARD FOR WAIVER

The Commission may waive its rules “for good cause shown.”¹⁷ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance with the rule inconsistent with the public interest.¹⁸ The Commission may take into account, on an individual basis, considerations involving equity, hardship, or more effective implementation of overall policy.¹⁹ “Waiver of the Commission’s rules is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²⁰

III. DISCUSSION

DISH respectfully requests that the Commission waive its rules so that DISH may pay the updated filing fee listed in the rules instead of the old filing fee. Absent a few of the amendments, the *Fees Order* is completely effective. Publication of the fee schedule on the official Code of Federal Regulations website lists the fee as \$3,555.²¹ The 90-day waiting period for Congress has either expired or will soon expire. The only remaining obstacle for the rules to

¹⁷ 47 C.F.R. § 1.3.

¹⁸ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁹ See, e.g., BellSouth Telecommunications, Inc., Petition to Establish New Rate Elements for Direct Access Directory Assistance Service, *Memorandum Opinion and Order*, 11 FCC Rcd. 1229, 1230 ¶ 4 (1995) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)).

²⁰ Temporary Waiver of Section 25.281(b) Transmitter Identification Requirements for Video Uplink Transmissions, *Order*, 31 FCC Rcd. 1752, 1753 ¶ 6 (2016) (citing *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008)).

²¹ 47 C.F.R. § 1.1107; see Schedule of Charges for Applications and Other Filings for the International Services, Electronic Code of Federal Regulations, https://www.ecfr.gov/cgi-bin/text-idx?SID=0d6ea0cc01bf4f850c16d591b439b59d&mc=true&node=se47.1.1_11107&rgn=div8 (current as of June 4, 2021).

become effective is publication of a Federal Register notice stating that the new fees are effective.

Imposing the old fee would be inequitable and would elevate form over substance. As the Commission has recognized, the RAY BAUM'S Act allowed the Commission "to bring the Commission's application fee structure into the 21st century by lowering fees" ²² Simply put, Congress and the Commission recognized that the old fee structure resulted in fees that were disproportionate for the actual applications. It makes little sense to require DISH to pay a fee that the Commission has recognized as disproportionate. If DISH were to apply for its authorization to operate EchoStar 23 in a month or two, it is likely that the new fee would have been made effective by that date. Indeed, the new fees may even be effective by the time the application comes off Public Notice. Paying the former fee now, however, results in paying nearly 40 times what the Commission has recognized as a reasonable and appropriate fee.

Good cause exists for the Commission to waive its rules. DISH will pay the filing fee listed in the rules, promoting harmony between the rules and actual practice. Forcing DISH to pay a fee that is not listed in the rules would create uncertainty for licensees about what fees they need to pay: the listed fee or a fee known only through extensive research.

Grant of the waiver is also consistent with the public interest. Absent a waiver, DISH will pay a fee that both Congress and the Commission consider disproportionate and outdated. There is no public interest justification in requiring DISH to do so.

IV. CONCLUSION

For the foregoing reasons, DISH respectfully requests the grant of its partial fee waiver.

²² *Fees Order*, 35 FCC Rcd. at 15090 ¶ 2.

Respectfully submitted,

/s/

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