

April 4, 2005

Via Hand Delivery
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Received

APR 07 2005

Policy Branch
International Bureau

RECEIVED

APR - 4 2005

Federal Communications Commission
Office of Secretary

Re: Mobile Satellite Ventures Subsidiary LLC

Call Sign S2358; File Nos. SAT-LOA-19980702-00066; SAT-AMD-20001214-00171; File No. SAT-AMD-20010302-00019; SAT-AMD-20031118-00335; SAT-AMD-20040209-00014; SAT-AMD-20040928-00192

EchoStar Satellite L.L.C.

Call Sign S2492; File No. SAT-LOA-20030827-00179; File No. SAT-AMD-20031126-00343

Dear Ms. Dortch:

Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby responds to the letter submitted by EchoStar Satellite L.L.C. ("EchoStar") on March 25, 2005 in the above-captioned proceeding.¹ MSV urges the International Bureau ("Bureau") to immediately grant its first-in-line application for a replacement satellite.

MSV has pending an application to launch and operate a replacement Mobile Satellite Service ("MSS") satellite at 101°W using 500 MHz² of Planned Ku-band frequencies for feeder links.³ MSV is first-in-line for these frequencies in the Bureau's first-come, first-served satellite processing queue. Of these frequencies, 200 MHz are already licensed to MSV for use by its current satellite.

¹ See Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Ms. Marlene H. Dortch, FCC, File No. SAT-LOA-20030827-00179 et al (March 25, 2005) ("*EchoStar Letter*")

² References to bandwidth in this letter refer to its use in both directions and with both horizontal and vertical polarizations.

³ See Applications of MSV, File Nos. SAT-LOA-19980702-00066; SAT-AMD-20001214-00171; File No. SAT-AMD-20010302-00019; SAT-AMD-20031118-00335; SAT-AMD-20040209-00014; SAT-AMD-20040928-00192.

In 2003, EchoStar filed an application for 300 MHz of Planned Ku-band frequencies at 101°W.⁴ EchoStar is second-in-line for these frequencies in the Bureau's first-come, first-served satellite processing queue. EchoStar claims that it can share the same frequencies with MSV at 101°W by locating uplinks outside of the United States and by pointing downlink spot beams in areas where MSV does not locate its feeder link earth stations.⁵ EchoStar has stated that its sharing proposal depends upon MSV and EchoStar entering into a sharing agreement.⁶

On March 17, 2005, MSV met with Bureau staff to discuss its proposal that the Bureau make clear in granting MSV's application that only those frequencies for which MSV is not already licensed at 101°W will be treated as non-replacement frequencies for purposes of enforcement of the Commission's milestones. EchoStar's recent letter does not oppose MSV's proposal. *EchoStar Letter* at 1. The only request EchoStar makes in its letter is that the Bureau ensure that grant of MSV's first-in-line application does not preclude grant of EchoStar's pending second-in-line application. *Id.* at 2.

Contrary to EchoStar's claim, its second-in-line application is mutually exclusive with MSV's first-in-line application, thereby precluding the Bureau from granting both. EchoStar has failed to provide evidence to either the Bureau or MSV demonstrating how MSV and EchoStar can share the same frequencies at the same orbital location without resulting in harmful interference to MSV and without limiting MSV's flexibility in designing its next-generation system.⁷ EchoStar has conceded that its sharing proposal is contingent upon conclusion of a coordination agreement with MSV detailing the conditions for sharing.⁸ While MSV has stated its willingness to discuss the potential for coordination with EchoStar,⁹ EchoStar has never initiated coordination discussions with MSV.¹⁰ At this point, EchoStar's sharing proposal is simply too speculative and undefined for the Bureau to grant EchoStar a license.

⁴ See Application of EchoStar, File No. SAT-LOA-20030827-00179 (filed August 27, 2003); EchoStar, Amendment, File No. SAT-AMD-20031126-00343 (November 26, 2003) ("*EchoStar Amendment*").

⁵ *EchoStar Amendment, Technical Annex 7, 24-26.*

⁶ *See id.*

⁷ See *Application of Globalstar, L.P. for Authority to Launch and Operate a Mobile-Satellite Service System in the 2 GHz Band, Order and Authorization*, 16 FCC Rcd 13739, DA 01-1634 (Chief, Int'l Bur. and Acting Chief, OET; July 17, 2001) (dismissing proposal to share Ku-band frequencies at 101°W because applicant failed to demonstrate feasibility of sharing).

⁸ See *EchoStar Amendment, Technical Annex* at 7, 24-26.

⁹ See Response of MSV, File No. SAT-LOA-20040210-00015 (May 21, 2004), at 5 ("MSV agrees that the possibility of sharing frequencies with EchoStar is worth exploring").

¹⁰ At MSV's urging, representatives of MSV and EchoStar conducted a conference call in December 2003 to discuss EchoStar's sharing proposal. The parties subsequently entered into a

Footnote continued on next page

EchoStar's sharing proposal presumes that EchoStar will locate its uplinks outside of the United States and that EchoStar will point its spot beam downlinks in areas where MSV does not locate a feeder link earth station. *See EchoStar Amendment, Technical Annex* at 7, 24-26. EchoStar, however, has never committed to complying with these assumptions. Indeed, its application contemplates the possibility of locating uplinks in the United States and using CONUS-wide downlink beams. *Id.* at 2, *Technical Annex* at 5-6, 8-9. Even if EchoStar were to make these commitments, EchoStar's sharing proposal would still preclude MSV from locating feeder link earth stations in areas where EchoStar points its spot beams, thus limiting MSV's flexibility to deploy additional feeder link earth stations in the future. There is no Commission policy or precedent requiring a first-in-line applicant to compromise its system design to accommodate a second-in-line applicant.

Given that the two applications are mutually exclusive, dismissal of EchoStar's second-in-line application upon grant of MSV's prior application is mandated by Commission policies.¹¹ In adopting its new satellite licensing rules, the Commission explained that it would dismiss pending conflicting applications in the satellite queue when the first-in-line application is granted.¹² The Commission explained that this policy would result in faster service to the public.¹³

Dismissal of EchoStar's second-in-line application, however, need not preclude EchoStar from operating its proposed system at 101°W. MSV continues to be willing to discuss the potential to share frequencies with EchoStar. EchoStar would be free to file a new application if

Footnote continued from previous page

nondisclosure agreement in March 2004. Since that time, EchoStar has never requested to continue sharing discussions.

¹¹ EchoStar did not request a waiver of this policy in filing its second-in-line application.

¹² *See Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, ¶ 113 (2003) ("We decide not to keep subsequently filed applications on file. In other words, if an application reaches the front of the queue that conflicts with a previously granted license, we will deny the application rather than keeping the application on file in case the lead applicant does not construct its satellite system.").

¹³ *Id.* ¶ 113 ("we will deny applications that conflict with previously granted applications because it is more likely to result in faster service to the public, and it will not disadvantage any party that may wish to apply for that orbit location if it becomes available. Under a single queue approach, we could reassign the orbit location just as quickly, or perhaps more quickly, if we accept new applications at the time the location becomes available. . . . Thus, all parties potentially interested in providing satellite service from the orbit location at issue have an equal opportunity to apply for the license when that orbit location becomes available.").

and when the sharing negotiations are successful. The Commission's policies support this approach.¹⁴

EchoStar can also explore using Appendix 30B Planned Ku-band frequencies at other orbital locations. At orbital locations where Planned Ku-band frequencies are not assigned, EchoStar will be first-in-line, thus avoiding the need to coordinate with other operators. Relative to other Fixed Satellite Service ("FSS") bands, the Planned Ku-band is not heavily used in the geostationary ("GSO") orbital arc, primarily because FSS use of the band in the United States is restricted to protect co-primary terrestrial users.¹⁵ While 101°W is the orbital location assigned to the United States under the Appendix 30B plan, EchoStar could pursue a Planned Ku-band license at another orbital location assigned to another administration by proposing an amendment to the Appendix 30B plan.¹⁶ In its application, EchoStar notes that the 101°W orbital location provides high elevation angles to all of CONUS,¹⁷ but the same can be said for other orbital locations in the GSO orbital arc where Planned Ku-band frequencies are unassigned.

¹⁴ See *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, *Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 20604 (2003).

¹⁵ See 47 C.F.R. § 2.106, footnote NG104; *Boeing, Order and Authorization*, DA 03-2073 (Chief, Int'l Bur. and Chief, OET, June 24, 2003), at ¶ 15 ("The Commission adopted the NG104 restriction for the purpose of limiting the number of earth stations with which terrestrial Fixed Service applicants would have to coordinate in order to obtain licenses for operation in the 10.7-11.7 GHz and 12.75-13.25 GHz bands.") ("*Boeing 2 GHz Order*").

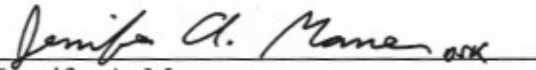
¹⁶ See *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-50 (January 10, 2005) (granting license to use Planned Ku-band frequencies at 63.5°W pursuant to amendment to Appendix 30B plan); *Boeing 2 GHz Order* (granting license to use Planned Ku-band frequencies at 120°W pursuant to amendment to Appendix 30B plan).

¹⁷ *EchoStar Amendment, Technical Annex* at 2-3.

Ms. Marlene H. Dortch
April 4, 2005
Page 5

For the aforementioned reasons, MSV respectfully requests that the Bureau immediately grant its first-in-line application for a replacement satellite at 101°W.

Respectfully submitted,



Jennifer A. Manner
Vice President, Regulatory Affairs
**MOBILE SATELLITE VENTURES
SUBSIDIARY LLC**
10802 Park Ridge Boulevard
Reston, Virginia 20191
(703) 390-2700

Bruce D. Jacobs
David S. Konczal
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
(202) 663-8000

Counsel for Mobile Satellite Ventures Subsidiary LLC

cc: Fern Jarmulnek
Robert Nelson
Cassandra Thomas
Thomas Tycz
Pantelis Michalopoulos, Counsel for EchoStar