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Federal Communications Commission  
Office of Secretary

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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**Mobile Satellite Ventures** )  
**Subsidiary LLC** )  
 )  
Application for Authority to Launch )  
and Operate a Replacement L-band )  
Mobile Satellite Service Satellite )  
at 101° W.L. )  
\_\_\_\_\_ )

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

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JUL 27 2005

Policy Branch  
International Bureau

To: International Bureau

**REPLY**

Pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, EchoStar Satellite L.L.C. ("EchoStar") hereby files this reply to the opposition of Mobile Satellite Ventures Subsidiary LLC ("MSV") to EchoStar's Petition ("Petition") to clarify and/or reconsider the International Bureau's ("Bureau's") decision to grant the above-captioned application.<sup>1</sup>

**I. INTRODUCTION**

While EchoStar's pending application (filed on February 10, 2004) to operate a satellite at the 101° W.L. orbital location ("EchoStar Refiled Application") has recently been dismissed by the Bureau,<sup>2</sup> the decision to do so was not well-grounded in fact and law and

<sup>1</sup> See *In the Matter of Mobile Satellite Ventures Subsidiary LLC*, DA 05-1492 (rel. May 23, 2005) ("MSV Order").

<sup>2</sup> See *In the Matter of EchoStar Satellite LLC*, DA 05-1955 (rel. July 6, 2005) ("Dismissal Order").

should be reversed. EchoStar plans to file an Application for Review of the *Dismissal Order* with the full Commission. Accordingly, the issues identified in EchoStar's Petition are not "moot" as MSV states, but instead, are still relevant for consideration by the Bureau. Indeed, if the Bureau were to clarify and/or reconsider the *MSV Order* as urged by EchoStar, it should *sua sponte* reinstate the EchoStar Refiled Application *nunc pro tunc*.

The EchoStar Refiled Application is not "mutually exclusive" with the authorization granted in the *MSV Order*. To hold otherwise would be to introduce an exceptionally broad concept of mutual exclusivity. That concept would mean that the use of satellite spectrum for a limited number of feeder link earth stations (in this case, just two) precludes any other use of the spectrum anywhere in the country. That proposition contravenes the important principles of frequency reuse and spectrum efficiency. The Commission has consistently allowed co-frequency use of satellite spectrum when a satellite carrier uses that spectrum to serve a limited number of feeder link sites. For example, in the Ka-band plan proceeding, the Commission mandated co-frequency sharing of MSS feeder uplinks with LMDS stations and GSO downlinks with FS stations in portions of the band.<sup>3</sup>

EchoStar continues to believe that its proposed satellite at 101° W.L. can share the extended Ku-band frequencies with MSV's two feeder links -- something even MSV has acknowledged may be possible. By dismissing the EchoStar Refiled Application on the heels of issuing the *MSV Order*, the Bureau has effectively eliminated any incentive for MSV to engage in any coordination discussions with EchoStar over the shared use of this spectrum -- a result that

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<sup>3</sup> *Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 11 FCC Rcd. 19005, 19033-37 (1996).

clearly is not in the public interest. The Bureau should clarify and/or reconsider the *MSV Order* as suggested in EchoStar's Petition.

## **II. THE ECHOSTAR REFILED APPLICATION IS NOT MUTUALLY EXCLUSIVE WITH THE MSV AUTHORIZATION**

MSV argues that the *Dismissal Order* has rendered "moot" the issues raised in EchoStar's Petition because that decision dismissed the EchoStar Refiled Application on the basis that it was "mutually exclusive" with the authorization recently granted to MSV ("MSV Authorization").<sup>4</sup> To the contrary, the *Dismissal Order* has not rendered EchoStar's Petition moot. The *Dismissal Order* was not well-grounded in law and fact, and accordingly, EchoStar is planning to file an Application for Review of that decision.

While EchoStar does not plan to repeat verbatim the arguments it intends to raise in its forthcoming Application for Review, it will challenge the Bureau's totally unsupported finding in the *Dismissal Order* that the EchoStar Refiled Application "would cause harmful interference to MSV's previously licensed operations."<sup>5</sup> Significantly, the Bureau has failed to cite any evidence or support in the record of this proceeding, or the EchoStar Refiled Application proceeding, that EchoStar's intended use of the extended Ku-band at the 101° W.L. orbit location would cause "harmful interference" with MSV's limited use of this spectrum for up to two feeder link earth stations. To the contrary, both EchoStar and MSV have asserted in the latter

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<sup>4</sup> MSV Opposition at 3-5 (July 7, 2005).

<sup>5</sup> *Dismissal Order* at ¶ 4.

proceeding that they believe sharing is possible -- undermining the Bureau's finding in the *Dismissal Order*.<sup>6</sup>

While a complete analysis of the sharing situation in the extended Ku-band is not possible without MSV's cooperation, EchoStar's preliminary technical analysis, based upon the disclosed elements of MSV's proposed system, strongly supports EchoStar's (and MSV's) claims that sharing is possible. This preliminary analysis will be submitted with EchoStar's forthcoming Application for Review of the *Dismissal Order* and a copy provided for the record in this proceeding.

The EchoStar Refiled Application is not "mutually exclusive" with the authorization granted in the *MSV Order*. To hold otherwise would be to introduce an exceptionally broad concept of mutual exclusivity. That concept would mean that the use of satellite spectrum for the purpose of communications with a limited number of feeder link earth stations (in this case, just two) precludes any other use of the spectrum anywhere in the country. That proposition contravenes the important principles of frequency reuse and spectrum efficiency.

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<sup>6</sup> See EchoStar Petition at 6-7; see, e.g., Comments of MSV at 6 ("MSV agrees with EchoStar that sharing may be possible and is prepared to work with EchoStar to attempt to reach an agreement on sharing"), filed in SAT-LOA-20040210-00015 (April 26, 2004). In recent correspondence, however, MSV has hardened its position on sharing with EchoStar. See Letter from Jennifer A. Manner, MSV Vice President of Regulatory Affairs to Donald Abelson, Chief of the International Bureau at 1 (June 15, 2005) (claiming that the EchoStar Refiled Application is "mutually exclusive" with the recently granted MSV application); Letter from Bruce D. Jacobs (Counsel to MSV) to Pantelis Michalopoulos and Philip L. Malet (Counsel to EchoStar) at 2 (June 15, 2005) ("Moreover, your proposal for two satellites to share the same frequencies at the same orbital location is novel. Any discussions regarding the feasibility of this untested concept will be highly technical in nature involving considerable engineering and legal resources. MSV finds it highly unlikely that the parties will reach any agreement in just two weeks.").

The Commission has been making a concerted effort to move in the direction of *increased* spectrum sharing, not less. It also runs counter to the Commission's specific precedent: the Commission has consistently allowed co-frequency use of satellite spectrum when a satellite carrier uses that spectrum for a limited number of feeder link sites. For example, in the Ka-band plan proceeding, the Commission mandated co-frequency sharing of MSS feeder uplinks with LMDS stations and GSO downlinks with FS stations in portions of the band.<sup>7</sup> While this co-frequency sharing involved a satellite and a terrestrial service, such sharing is still equally applicable here. The underlying policy is the same -- to avoid an enormous nationwide waste of spectrum just for the sake of operating a handful of feeder link earth stations. In this case, the spectrum can be reused more efficiently by simply establishing suitable protection zones around MSV's feeder link sites. This is what the Commission has consistently done in the past to promote spectrum efficiency.

The Bureau should be encouraging sharing of valuable spectrum resources instead of removing any incentive for MSV to engage in coordination discussions with EchoStar by dismissing the EchoStar Refiled Application and issuing the *MSV Order*. Shortly after the issuance of the *MSV Order* and before the issuance of the *Dismissal Order*, MSV agreed to start coordination discussions with EchoStar and then summarily called off those meetings.<sup>8</sup> Now that the EchoStar Refiled Application has been dismissed by the Bureau, such coordination discussions will not progress, thereby squandering a genuine opportunity to maximize use of the

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<sup>7</sup> *Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, 11 FCC Rcd. 19005, 19033-37 (1996).

<sup>8</sup> See Letter from Bruce M. Jacobs (Counsel to MSV) to Pantelis Michalopoulos and Philip L. Malet (Counsel to EchoStar) (June 27, 2005).

extended Ku-band frequencies at the 101° W.L. orbital location. This could not be an intended result of the Commission's new satellite licensing procedures.<sup>9</sup>

The MSV Opposition demonstrates how emboldened MSV has become. In sharp contrast to its prior statements that "sharing is possible" between EchoStar and MSV, MSV now states that it has a "nationwide and exclusive license to use Planned Ku-band spectrum."<sup>10</sup> MSV further asserts that despite its acceptance of the *MSV Order*, it even "may propose to modify the present design of MSV-1 to intensify use of its feeder link spectrum by deploying spot beams and as many as three or four additional earth stations."<sup>11</sup> Under the terms of its authorization, MSV cannot deploy these "additional earth stations" because it is limited to a "maximum of *two fixed satellite earth stations* within the continental United States."<sup>12</sup>

As EchoStar has previously related, coordination of the two satellites is possible based on the likely use of spot beams in the extended Ku-bands for both the EchoStar and MSV systems. EchoStar is committed to using spot beams and believes that MSV's system will also benefit from the use of spot beams on its feeder links in order to provide sufficient capacity to meet its stated performance objectives. EchoStar remains committed to working with MSV to determine the optimum technical and operational means to achieve this goal without limiting the ability of either system to meet its performance objectives.

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<sup>9</sup> See Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 10760, at ¶ 4 (2003) ("Satellite Licensing Order") (finding that the new procedures the Commission adopted were intended to "ensure that satellite spectrum and orbital resources will be used efficiently, to the benefit of American consumers").

<sup>10</sup> MSV Opposition at 3-4.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *MSV Order* at ¶ 66 (emphasis added).


The Bureau must clarify and/or reconsider the *MSV Order* and conclude that the EchoStar Refiled Application is not mutually exclusive with MSV's Authorization. Without doing so, the full potential of the extended Ku-band at the 101° W.L. orbital location will not be achieved.

### III. CONCLUSION

For the reasons stated above and stated in EchoStar's Petition, EchoStar respectfully requests that the Bureau clarify and/or reconsider the *MSV Order*.

Respectfully submitted,

**EchoStar Satellite L.L.C.**



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July 21, 2005

## CERTIFICATE OF SERVICE

I, Marc A. Paul, an attorney with the law firm of Steptoe & Johnson LLP, hereby certify that on this 21st day of July, 2005, served a true copy of the foregoing "Reply" by hand delivery (or as otherwise indicated) upon the following:

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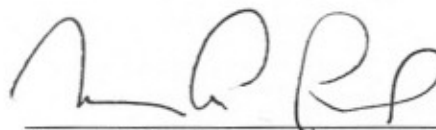
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