



ORIGINAL

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June 15, 2005

Via Hand Delivery  
Mr. Donald Abelson  
Chief, International Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Received

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JUN 20 2005

JUN 15 2005

Policy Branch  
International Bureau  
Federal Communication Commission  
Bureau / Office

**RE: EchoStar Satellite L.L.C.**

Call Sign S2615; File No. SAT-LOA-20040210-00015

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

Dear Mr. Abelson:

Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby requests that the International Bureau ("Bureau") immediately dismiss EchoStar's mutually exclusive second-in-line application for Planned Ku-band frequencies at 101°W as required by the Commission's policies. Immediate dismissal of EchoStar's application is essential to provide MSV with the certainty needed to develop its next-generation system.

In February 2004, EchoStar filed an application for 300 MHz of Planned Ku-band frequencies at 101°W.<sup>1</sup> EchoStar was second-in-line for these frequencies in the Bureau's first-come, first-served satellite processing queue behind an application filed by MSV for the same frequencies.<sup>2</sup> EchoStar claimed that it could share these frequencies with MSV but only if EchoStar and MSV first entered into a sharing agreement.<sup>3</sup>

On May 23, 2005, the Bureau granted MSV's first-in-line application.<sup>4</sup> In adopting its satellite licensing rules in August 2003, the Commission explained that it would dismiss pending

<sup>1</sup> See Application of EchoStar Satellite LLC, File No. SAT-LOA-20040210-00015 (February 10, 2004) ("*EchoStar Application*").

<sup>2</sup> 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.

<sup>3</sup> See *EchoStar Application, Technical Annex 7, 24-26*.

<sup>4</sup> See *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-1492 (May 23, 2005) ("*MSV-1 Grant*").

conflicting applications in the satellite queue when the first-in-line application is granted.<sup>5</sup> The Commission explained that this policy would result in faster service to the public.<sup>6</sup> Because MSV's now-granted first-in-line application is mutually exclusive with EchoStar's second-in-line application, the Commission's policies mandate that the Bureau dismiss EchoStar's second-in-line application.<sup>7</sup>

Indeed, in granting MSV's application, the Bureau noted that it would only consider EchoStar's proposal after EchoStar reaches a coordination agreement with MSV.<sup>8</sup> While MSV has stated its willingness to discuss the potential for sharing with EchoStar, EchoStar has only recently attempted to discuss coordination with MSV.

Immediate dismissal of EchoStar's application is essential to provide MSV with the certainty needed to develop its next-generation system. As it stands, the pending second-in-line EchoStar application creates uncertainty as to whether MSV can modify its licensed system without losing priority in the Bureau's first-come, first-served queue.<sup>9</sup>

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<sup>5</sup> 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.").

<sup>6</sup> *Id.* ("[W]e 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.").

<sup>7</sup> EchoStar did not request a waiver of this policy in filing its second-in-line application.

<sup>8</sup> *MSV-1 Grant* at n.45 ("If the parties reach an agreement, we will entertain a request that involves co-frequency operations."). The Bureau previously dismissed a similar sharing proposal due to the applicant's failure to demonstrate the feasibility of sharing. 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).

<sup>9</sup> EchoStar currently has only one application pending in the FCC's satellite queue that is mutually exclusive with MSV's license for MSV-1. See *Application of EchoStar Satellite LLC*, File No. SAT-LOA-20040210-00015 (February 10, 2004). A previous EchoStar application that is also mutually exclusive with MSV's license for MSV-1 was dismissed in February 2004. See *EchoStar, Application*, File No. SAT-LOA-20030827-00179 (filed August 27, 2003); *EchoStar, Amendment*, File No. SAT-AMD-20031126-00343 (November 26, 2003); Letter from Thomas

Ms. Marlene H. Dortch

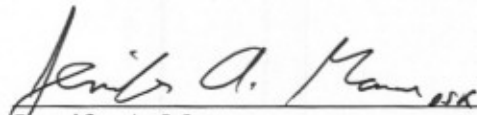
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Finally, MSV notes that dismissal of EchoStar's second-in-line application does not mean that EchoStar will be precluded from pursuing its proposed system at 101°W. MSV continues to be willing to discuss the potential to share frequencies with EchoStar. As the Bureau has contemplated, if MSV and EchoStar can reach an agreement, then EchoStar would be free to file a new application for the Bureau to consider.

Please contact the undersigned with any questions.

Respectfully submitted,



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S. Tycz, FCC, to David K. Moskowitz, EchoStar, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (February 9, 2004) (dismissing application). EchoStar has sought review of this decision. *See* EchoStar Satellite L.L.C., Application for Review, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (January 26, 2005). To the extent this application is reinstated, MSV requests that the Bureau also dismiss this application as mutually exclusive with MSV's license for MSV-1.

Ms. Marlene H. Dortch

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