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

In the Matter of	)	
	)	
Mobile Satellite Ventures Subsidiary LLC	)	
	)	File No. SAT-AMD-20040209-00014
Amendment to Application for Authority to	)	
Launch and Operate a Replacement Satellite	)	
At 101° W.L.	)	

OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to Sections 1.106(g) and 25.154(c) of the Commission's Rules, 47 C.F.R. §§ 1.106(g), 25.154(c), EchoStar Satellite LLC ("EchoStar") hereby files this opposition to Mobile Satellite Ventures Subsidiary LLC's ("MSV") Petition for Reconsideration ("Petition")[1] of the International Bureau's ("Bureau") decision to dismiss MSV's above-captioned amendment to its pending application for its Mobile-Satellite Service ("MSS") system for failing to include an interference analysis required for space stations in the Fixed Satellite Service ("FSS").[2]

There is no doubt that the bands in question are FSS bands and that, absent a waiver, can only be used for FSS service. Therefore, MSV is wrong when it argues that no interference analysis was required on the ground that it does not propose to use the spectrum for FSS service. In addition, the Bureau would have been wrong to apply to MSV's application any

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[1] *See In the Matter of Mobile Satellite Ventures Subsidiary LLC, Amendment to Application for Authority to Launch and Operate a Replacement MSS Satellite at 101° W*, Petition for Reconsideration, File No. SAT-AMD-20040209-00014 (May 24, 2004) ("Petition").

[2] *See* Letter from Thomas S. Tycz, Chief, Satellite Div., Int. Bur., to Lon C. Levin, Vice President, MSV, File No. SAT-AMD-20040209-00014, DA 04-1095 (Apr. 23, 2004) ("Dismissal Letter").

less stringent a standard than it has applied in evaluating EchoStar's applications for spectrum at the same orbital location.

I. THE ITU AND THE COMMISSION'S RULES CLEARLY ALLOCATE THE BANDS IN QUESTION TO THE FSS AND MSV'S PROPOSED USE IS FOR FSS

The ITU Table of Frequency Allocations clearly shows that the bands in question -- 10.70-10.95 and 11.20-11.45 GHz (downlink) and 12.75-13.25 GHz (uplink) -- are allocated to the FSS. The FCC's Table of Frequency Allocations is consistent with the international allocation.[3] There is no allocation to the MSS in these bands. The 10.70-10.95 GHz, 11.20-11.45 GHz and 12.75-13.25 GHz bands make up part of the Appendix 30B bands, commonly referred to as the "Planned FSS bands." Indeed, Appendix 30B is entitled "Provisions and associated Plan for the fixed-satellite service in the frequency bands 4500-4800 MHz, 6725-7025 MHz, 10.70-10.95 GHz, 11.20-11.45 GHz and 12.75-13.25 GHz." Clearly, use of these bands by GSO spacecraft are for FSS use, not MSS.

In light of this unequivocal allocation it is unclear what MSV means when it states that "feeder links for MSS satellite *at times* may be considered as FSS frequencies."[4] If MSV believed that FSS feeder links for MSS systems do not qualify as FSS, it should have requested a waiver of the band's FSS allocation. MSV has not done so. Contrary to MSV's argument,[5] the Commission has repeatedly licensed FSS feeder links for MSS systems, without

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[3] *See* 47 C.F.R. § 2.106.

[4] *See* Petition at 6 (emphasis added). MSV uses the Planned FSS Ku-band frequencies for feeder link operations. Feeder link operations traditionally utilize the FSS bands because their characteristics are consistent with FSS operations (*e.g.*, fixed earth station locations) and there is a limited amount of MSS spectrum available. Most, if not all, MSS satellite operators utilize both the MSS bands for communications with mobile subscribers and the FSS bands for feeder links to large earth station antennas.

[5] *See id.* at 7.

once intimating that this entailed a non-conforming use of the FSS spectrum.[6] Moreover, MSV has recognized that its proposed feeder link operations are in the FSS. For example, in its December 14, 2000 application for additional Ku-band spectrum, MSV states that its "proposed operations will not substantially increase the number of FSS earth stations operating in the 13/11 GHz band."[7] Thus, contrary to MSV's insinuation, the Commission should not have to clarify that its interference analysis requirement is applicable to FSS feeder links for MSS satellites.[8] .

II. THE COMMISSION SHOULD APPLY NO LESS STRINGENT A STANDARD THAN IT HAS APPLIED TO ECHOSTAR'S APPLICATIONS

It is a well-settled canon of administrative law that similarly situated entities should be treated the same.[9] In evaluating MSV's application, the Commission should not apply a more lenient standard than the standard it has applied to EchoStar's applications for the same slot. The Bureau dismissed those applications on the ground that they were incomplete and internally inconsistent."[10] EchoStar has filed a Petition for Reconsideration of the Bureau's

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[6] *See e.g., In the Matter of Celsat America, Inc.*, Order and Authorization, 16 FCC Rcd. 14278 (2001) (modifying Celsat's 2 GHz MSS License to allow it to operate its system's feeder links in a portion of the Ka-band); *see also Motorola Satellite Communications, Inc.*, Order and Authorization, 10 FCC Rcd. 2268, 2271 ¶ 17 (Int'l. Bur. 1995).

[7] *See Motient Services, Inc., Amendment to Pending Application for Authority to Launch and Operate a Second Generation Mobile Satellite System,* File No. SAT-AMD-20001214-00171, Exhibit A.

[8] *See* Petition at 6 ("To be sure, feeder links for MSS satellites at times may be considered as FSS frequencies, but this is by no means clear and was not clarified in the *December Public Notice.*").

[9] *See, e.g., McElroy Electronics Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993); *Adams Telecom, Inc. v. FCC*, 38 F.3d 576, 581 (D.C. Cir. 1994) (citing *McElroy*).

[10] *See* Dismissal Letter at 3. Specifically, the Bureau stated that it found inconsistencies between the frequency assignments requested by EchoStar in its Aug. 27, 2003 application and Nov. 26, 2003 amendment and that EchoStar failed "to provide technical information to indicate

dismissal, on the ground that, among other things, the FCC has impermissibly applied a letter-perfect standard. As EchoStar explains in its Petition for Reconsideration, "the minor typographical errors and omissions that were identified by the Bureau in its Dismissal Letter are precisely the types of matters that can be corrected..." Moreover, "the incorrect frequency references are easily resolvable from an examination of the application as a whole and the limited amount of missing technical information prejudices no one."[11] In any event, MSV's omission of an interference analysis would appear to be, if anything, a more grave deficiency than the grounds for the EchoStar dismissal, and should not be subject to a less searching standard of scrutiny.

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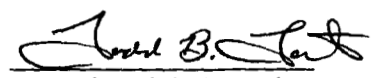
which transponders will be connected to which spot beam in either the uplink or downlink direction." *Id.*

[11] *See EchoStar Satellite LLC.*, Petition for Reconsideration, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (Mar. 10, 2004), at 2.

III. CONCLUSION

For all of the foregoing reasons, the Bureau should deny MSV's Petition for Reconsideration of the Bureau's decision to dismiss MSV's amendment application requesting an additional 50 MHz in each direction of Planned Ku-band frequencies (10.70-10.75 GHz (downlink) and 13.15-13.20 GHz (uplink)) for feeder links and restore EchoStar to first-in-line status for these frequencies.

Respectfully submitted,



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Dated: June 7, 2004

CERTIFICATE OF SERVICE

I, Todd B. Lantor, hereby certify that on this 7th day of June 2004, a true copy of the foregoing Opposition was served via U.S. mail, postage prepaid or hand delivery (indicated by *), upon the following:

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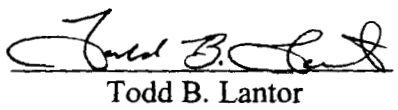

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