

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

SEP 28 2004

Federal Communications Commission
Office of Secretary

_____)	
In the Matter of)	
)	
contactMEO Communications, LLC)	SAT-LOA-19971222-00222
)	SAT-AMD-20040322-00057
Application for Authority to Launch)	SAT-AMD-20040719-00141
And Operate a Geostationary and Non-)	
Geostationary Orbit Fixed Satellite)	
System in the Ka-Band)	
_____)	

OPPOSITION TO PETITIONS TO DENY OR DISMISS

ContactMEO Communications, LLC (“@contact”) hereby files its Opposition to the Petition to Deny of EchoStar Satellite LLC (“EchoStar”) and the Consolidated Petition to Dismiss or Deny of SES Americom, Inc. (“SES Americom”) (jointly, “Petitioners”) in the above-captioned proceeding. EchoStar’s arguments in large part amount to no more than a late-filed second petition for reconsideration of the Satellite Division, International Bureau’s (“Bureau’s”) summary denial of its Ka-band applications.¹ EchoStar essentially argues that the Bureau erred by “dismissing” its

¹ *Memorandum Opinion and Order, In the Matter of EchoStar Satellite LLC, Applications for Authority to Construct, Launch and Operate Geostationary Satellites In the Fixed-Satellite Service Using the Ka and/or Extended Ku-Bands at the 83° W.L., 113° W.L., and 121° W.L. Orbital Locations, DA 04-1167 (rel. Apr. 29, 2004) (“Denial Decision”)* (denying EchoStar’s applications to use NGSO FSS Ka-band frequencies for GSO FSS satellites, denying EchoStar’s failure to show good cause for waiver of the NGSO FSS spectrum designation, denying EchoStar’s application to use the extended

applications for, among other things, failure to demonstrate that its proposed satellites will not cause harmful interference to other systems.² It asserts that the technical showings by @contact are equally inadequate and that the Bureau should reinstate its applications or deny @contact's application.³ Finally, EchoStar appeals to the Bureau to reinstate its applications because its applications are "similarly situated" to @contact's application.⁴

For its part, SES Americom argues that @contact does not show that its proposal satisfies the Ka-band segmentation plan.⁵ It also states that @contact cannot rely on international EPFD limits to justify domestic use of the 19.7-20.2 GHz and 29.5-30.0 GHz bands.⁶ Finally, it asserts that @contact has not provided any justification for warranting a different outcome from the Denial Decision.⁷

Ku-band, denying EchoStar's application to operate Ka-band GSO satellites at 121° W.L. and 83° W.L., denying EchoStar's request for waiver of footnote NG 165 of 47 C.F.R. Section 2.106, and denying applications of EchoStar to operate hybrid GSO satellites at 105° W.L. and 83° W.L.), petition for reconsideration filed June 1, 2004.

² EchoStar Petition at 2, 4. *See* n.6, *infra*.

³ *Id.* at 4-6. Also, EchoStar once again asks the Commission to commence a rulemaking petition redesignating the NGSO Ka-band spectrum for use by its GSO satellites. *Id.* at 8, Denial Decision at 5. The Bureau rejected EchoStar's attempt to seek use of that spectrum for its GSO satellites by waiver. *Id.* at 8.

⁴ *Id.* at 7-8.

⁵ SES Americom Petition at 5-6.

⁶ *Id.* at 6-8. The matter of NGSO interference into GSO satellites has been the subject of many joint industry-government meetings, including those that were conducted under the aegis of JTG 4-9-11 in 1998. At CPM (2000) and then at WRC-2000, maximum EPFD levels were adopted to assure that NGSO satellites do not cause unacceptable interference to GSO satellites. The objective was to establish an EPFD quantification of acceptable interference. The Commission made it quite clear, contrary to SES

For the reasons discussed below, Petitioners' arguments are entirely without merit. Accordingly, @contact's application should be processed and granted as soon as possible.⁸

Americom's argument, that it accepts EPFD limits adopted by the ITU-R to avoid unacceptable interference into GSO satellites from NGSO satellites:

The limits adopted by WRC-2000 were developed using the agreed upon criteria developed by the ITU-R. The JTG 4-9-11 (1) studied the characteristics of the GSO FSS systems to be protected, (2) defined protection criteria for GSO FSS systems, and (3) based on these parameters, determined the level of interference that could be accepted from NGSO FSS systems. We find, based upon the technical work adopted by the WRC-2000 and the record developed in this proceeding, that the international consensus single-entry EPFD_{down} limits for 0.6, 1.2, 3, and 10 meter GSO FSS receive earth station antennas are appropriate for adoption domestically.

Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Services in the Ku-Band Frequency Range and Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates, Report and Order, 16 FCC Rcd 4096, 4100 (2000) (emphasis added), 16 FCC Rcd 4096 (2000) at para. 77 [footnotes omitted]; see also, *id.* at 4100, 4109. Note that SES Americom does not contend that the EPFD limits for 19.7-20.2 GHz and 29.5-30 GHz contained in Article 22 of the ITU Radio Regulations are not met by @contact's NGSO application. @contact has shown that its system will not cause unacceptable interference, sufficient to justify the waiver it seeks to use the upper 500 MHz of the Ka-band on a secondary basis.

⁷ *Id.* at 9.

⁸ See Letters to the Commission from TelAlaska (September 10, 2004) and Alaska Telephone Association (September, 2004) urging expeditious Commission grant of @contact's application, to provide the people of Alaska the broadband services they need.

I. @CONTACT'S APPLICATION DIFFERS TECHNICALLY AND SUBSTANTIVELY FROM ECHOSTAR'S DENIED APPLICATION

EchoStar argues that its applications contained interference analyses “nearly identical” to those submitted by @contact and that because its applications were denied then @contact’s application should be similarly denied.⁹ SES Americom similarly argues that denial of EchoStar’s application requires similar treatment for @contact’s application. These arguments are without merit.

EchoStar’s applications, filed in August 2003, were accepted for filing and appeared on public notice. During that time EchoStar might have augmented its technical showings to demonstrate that it could avoid interfering with NGSO satellites, but it failed to do so. The Bureau then applied its processing procedures, rules and policies to correctly deny EchoStar’s applications, concluding that “EchoStar did not submit a technical showing demonstrating it could operate compatibly with NGSO FSS systems.”¹⁰ EchoStar’s assertion that its applications were “dismissed” is simply not correct. Rather, its applications were denied. Its only option now is to file new applications that are compliant with the Bureau’s requirement to demonstrate no harmful interference to NGSO networks. Reinstatement, *nunc pro tunc* or otherwise, may be a remedy for improper dismissal but it is not the appropriate remedy for proper denial of an application based on a full and complete record. In the event EchoStar were to refile, it would need to provide a complete technical showing demonstrating that its GSO satellites

⁹ EchoStar Petition at 5.

¹⁰ Denial Decision at 8.

could operate on a secondary basis to NGSO systems in the 18.8-19.3 GHz and 28.6-29.1 GHz bands. In any event, EchoStar's applications are in this regard clearly not "nearly identical" to @contact's application.

EchoStar asserted in its applications that it would agree to "immediately cease" operations in its Earth-to-space links upon notification of harmful interference to NGSO FSS operators.¹¹ Citing Commission precedents and policies, including the Space Station Licensing Reform Order,¹² the Bureau stated in its Denial Decision that EchoStar failed to provide a showing that it can operate on a non-harmful interference basis to primary NGSO FSS operations.¹³ In its Petition, EchoStar again argues that its willingness to immediately cease interference upon notification is sufficient to demonstrate the necessary protection to NGSO systems, and that its applications are therefore nearly identical to @contact's application. But the plain fact is that EchoStar has failed from the beginning to make the necessary technical showings, and at no time did EchoStar cure the substantive defect that led to Bureau denial. Once again, therefore, EchoStar's applications are not "nearly identical" to @contact's application. In addition, it is equally plain that EchoStar's rejected applications cannot serve as precedent for action on @contact's application, as SES Americom suggests.

¹¹ Denial Decision at 6; EchoStar Applications at 15.

¹² Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54*, 18 FCC Rcd 10760 (2003) ("Space Station Licensing Reform Order").

¹³ Denial Decision at 7.

In its application, @contact demonstrated how it would avoid in-line and other potential interference events to protect other NGSO systems, that during such events it would cease transmitting and utilize its other satellites instead, including its own HEO satellites.¹⁴ In stark contrast, EchoStar would cease providing service entirely during such times. @contact demonstrated that it met the Commission's existing rules and policies regarding protection of other NGSO satellites from harmful interference but the Bureau requested additional information with regard to reentry casualty risk assessment and 2-degree spacing,¹⁵ two showings that formerly were not clearly

¹⁴ @contact Amendment at 8-9, Annexes. Such extensive and more rigorous showings involving milestones, power limits, and waivers transcend the requirements for a true GSO satellite proposal, demonstrating that @contact has proposed an operational NGSO network using NGSO spectrum, not a GSO network. EchoStar's curious footnote in its Petition that @contact's proposed GSO satellites would "preclude other GSO satellites from operating on the same frequencies at the same orbital locations" is irrelevant to its concomitant erroneous assertion that @contact proposes a GSO network. EchoStar Petition at 5, n19. To the contrary, @contact, an NGSO applicant, would use NGSO spectrum for all of its satellites, whereas GSO network satellites at the same orbital slots could use NGSO spectrum only on a secondary basis. This also counters SES Americom's argument regarding the Ka-band segmentation plan because @contact's application is for a network of NGSO satellites in HEO and GSO orbit that operate as a unified NGSO system. It should be emphasized that @contact's system has been designed to prevent any noticeable interference to other satellite systems, GSO and NGSO. See @contact Amendment at 8, Technical Appendix. Indeed, it is due to the adequacy of @contact's NGSO non-interference demonstrations that no other NGSO applicant (SkyBridge II, LLC or Northrop Grumman Space & Mission Systems Corporation (NGST)) submitted a petition against @contact in this proceeding. Further, even as a "GSO" filing, the fact remains that @contact's proposal is fully compliant with the Commission's two-degree spacing policy, allowing other GSO operators to make secondary use of the non-GSO FSS primary bands at any other location.

¹⁵ Letter from Chief, Satellite Division, International Bureau, FCC, to David M. Drucker, @contact, DA 04-1722, Jun. 16, 2004.

applicable to NGSO networks.¹⁶ In response, @contact supplemented its application with detailed technical showings, and its application was then found acceptable for filing.¹⁷ This is quite different from the record underlying EchoStar's applications for a GSO network using NGSO frequencies.

Accordingly, EchoStar's assertion that its applications are "nearly identical" to the application filed by @contact and that @contact's application should be similarly denied is summarily without merit, procedurally, technically and legally. SES Americom's argument regarding similar treatment is equally without merit.

II. **THERE IS NO BASIS FOR REINSTATEMENT OF ECHOSTAR'S APPLICATIONS**

EchoStar argues that an alternative to the Bureau's summary denial of its applications is reinstatement and processing on a first-come, first-served basis.¹⁸ But this

¹⁶ @contact also provided further technical detail in support of its contingent request for a waiver of the 28 GHz Band Plan to allow it to operate GSO satellites on a truly secondary basis in the 18.8-19.3 GHz and 28.6-29.1 GHz bands.

¹⁷ Report No. SAT-00234 at 2, August 13, 2004. Similarly, EchoStar's request for a rulemaking proceeding to change the frequency assignments of the GSO FSS band is more properly addressed in its petition for reconsideration of the Bureau's Denial Decision. EchoStar Petition at 8-9.

¹⁸ EchoStar Petition at 7-8. EchoStar's error was not a procedural omission of required information from its applications, but its failure to demonstrate compliance with (or justify a waiver of) the rules. EchoStar's subsidiary assertion regarding a major amendment is inapposite because the subject application is for an NGSO system. As @contact has described in detail in its Amendment, its proposed system reduces the overall required spectrum, reduces the total number of spacecraft, causes no interference to other NGSO systems, meets EPFD standards, etc. @contact Amendment at 9-11. The Commission has held on numerous occasions that a change in the orbital architecture of a non-GSO satellites system, which "will not increase the potential for harmful interference to existing or planned systems," is not a "major" amendment under Section 25.116 of the rules. See, e.g., *Orbital Communications Corporation*, 9 FCC Rcd 6476, 6481 (1994); *id.*

is clearly not the proceeding in which to raise this argument. In its Petition, EchoStar in fact has offered no justification for denying @contact's application, only arguments endeavoring to resurrect its own defective applications – arguments misplaced in this proceeding. As discussed earlier, EchoStar failed to demonstrate non-interference to NGSO systems in its applications. It also failed to provide such a demonstration during the entirety of the pleading cycle following public notice of its applications and pendency of the Bureau's Denial Decision, when it was on notice of the need to do so.¹⁹ Under these circumstances, reinstatement is not an available remedy, let alone reinstatement *nunc pro tunc*. Indeed, reinstatement of a defective application would lead to unending uncertainty in the regulatory process, a result surely of little benefit to the industry or the public interest. Interestingly, even in its Petition EchoStar offers no demonstration that its GSO system would be capable of avoiding harmful interference to NGSO systems operating in the NGSO bands.

Finally, as a procedural matter, there are no EchoStar applications currently on file seeking to use the orbital slots @contact has specified in its NGSO application because the Bureau denied EchoStar's applications for a GSO network based on EchoStar's failure to demonstrate protection to NGSO systems.²⁰ Were EchoStar to refile its applications with the appropriate non-interference showings, it would need to

¹⁹ EchoStar Petition at 5 (claiming it needs an "opportunity" to correct its applications despite pleadings filed by NGST and Hughes raising that very issue).

²⁰ Contrary to EchoStar's characterization that its denied applications and @contact's application are "similarly-situated," as discussed earlier herein, the Bureau in the end did not dismiss @contact's application but it did deny EchoStar's application. The applications are anything but similarly situated. EchoStar Petition at 7; Section I, supra.

protect all NGSO system satellites from harmful interference. If the Commission were to treat @contact's application as containing "GSO" satellites, any refile of EchoStar's applications would put EchoStar behind @contact for use of the NGSO bands at the 83° W.L. and 121° W.L. orbital locations and thus require dismissal of the newly filed applications.

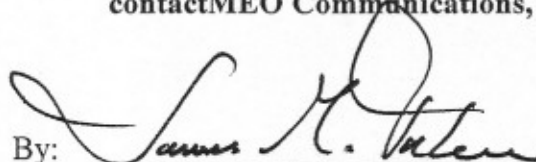
III. CONCLUSION

EchoStar's assertion that its applications are similar to @contact's application forms the basis of a series of arguments that fail procedurally, technically and legally. Unlike EchoStar, @contact has demonstrated that its NGSO system will not interfere with other systems. For similar reasons, SES Americom's Petition should be denied. More importantly, nothing in EchoStar's or SES Americom's pleading provides any justification for denying @contact's application.

Respectfully submitted,

contactMEO Communications, LLC

By:



James M. Talens
6017 Woodley Road
McLean, Virginia 22101

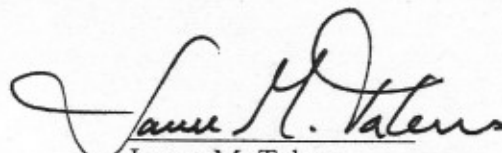
*Counsel for contactMEO
Communications, LLC*

David M. Drucker, Manager
contactMEO Communications, LLC
2539 N. Highway 67
Sedalia, CO 80135
303.688.5162

September 28, 2004

CERTIFICATE OF SERVICE

I, James M. Talens, do hereby certify that on this 28th day of September, 2004, copies of the foregoing "Opposition to Petitions" were served on the following parties by hand delivery or United States Postal Service (indicated by *):


James M. Talens

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Thomas S. Tycz
Satellite Division, International Bureau
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

Nancy J. Eskenazi*
Vice President &
Assoc. General Counsel
SES AMERICOM, Inc.
Four Research Way
Princeton, NJ 08540

David K. Moskowitz*
EchoStar Satellite LLC
9601 South Meridian Boulevard
Englewood, CO 80112

Pantelis Michalopoulos*
Philip L. Malet
Lee C. Milstein
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Peter A. Rohrbach*
Karis A. Hastings
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004