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

Int'l Bureau

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DEC 01 2003

Front Office

**Re: Mobile Satellite Ventures Subsidiary LLC  
File No. SAT-ASG-20010302-00017 et al.,  
Application For Authority to Launch and Operate a  
Replacement L-band Mobile Satellite Service Satellite at 101°W**

Dear Ms. Dortch:

Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby replies to a November 14<sup>th</sup> letter submitted by EchoStar Satellite Corporation ("EchoStar"). EchoStar objects to MSV's request that the International Bureau ("the Bureau") refrain from applying the new bond requirement when it grants MSV's application for a replacement Mobile Satellite Service ("MSS") satellite at 101°W.<sup>1</sup> EchoStar fails to refute the valid reasons MSV presented for the relief it requests, including (i) certainty that concerns about speculation are not present and no warehousing of spectrum would result; (ii) the absence of any precedential impact; (iii) fairness in not applying a new set of rules to an application that was ripe for grant for two years before the new rules were adopted; and (iv) the importance of the satellite's use for public safety service.

### Background

In July 1998, MSV filed an application to launch and operate a replacement geostationary ("GSO") Mobile Satellite Service ("MSS") satellite at 101°W to replace its existing satellite.<sup>2</sup> In this application, as amended, MSV requested authority to use certain additional frequencies: (i) 5 MHz of the lower L-band that MSV is licensed to use but that its current satellite is not capable

<sup>1</sup>See Letter from Lon C. Levin, Mobile Satellite Ventures Subsidiary LLC, to Ms. Marlene H. Dortch, FCC, File No. SAT-ASG-20010302-00017 et al. (November 4, 2003) ("*MSV Letter*"); Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Ms. Marlene H. Dortch, FCC, File No. SAT-ASG-20010302-00017 et al. (November 14, 2003) ("*EchoStar Letter*")

<sup>2</sup>See Application of AMSC Subsidiary Corporation, File No. SAT-LOA-19980702-00066 (July 2, 1998).

of using and (ii) 250 MHz (in each direction) of extended-band frequencies in the Planned Ku-band for feeder links, in order to handle the additional traffic generated by MSV's next-generation, higher-capacity, spot-beam satellite.

In May 2003, the Commission released an *Order* amending its satellite licensing policies.<sup>3</sup> Among other things, the Commission adopted a new policy regarding what is considered to be a replacement satellite and imposed a \$5 million or \$7.5 million bond requirement on licenses for new satellites, but not replacement satellites. *SSLR Order* ¶¶ 167-172, 257-258. As a result of these changes, MSV's request for new, "non-replacement" frequencies in its replacement application may be considered as an application for a "new" satellite under the Commission's new policies. Thus, MSV may be required to post a bond within 30 days of grant of this replacement application.

On November 4, 2003, MSV requested that the Bureau either (i) consider MSV's replacement application pursuant to the rules and policies that existed at the time it was originally filed, prior to the recently adopted satellite licensing rules, or (ii) waive the new bond requirement. *MSV Letter* at 1. MSV explained that the Bureau has the authority to refrain from imposing the bond requirement on applications such as MSV's that were pending at the time the *SSLR Order* was adopted. *Id.* at 7. MSV demonstrated that the Bureau should do so in this case because (i) MSV's application does not present speculation or warehousing concerns (*id.* at 7-8); (ii) given that MSV's application was ripe for grant for two years before the Commission revised its licensing policies, fairness dictates that the Bureau refrain from applying the bond to MSV (*id.* at 8-9); and (iii) there are no other similarly situated applicants that can benefit from a decision to refrain from applying the bond to MSV (*id.* at 9). To the extent the Bureau considers MSV's replacement application pursuant to the new policies adopted in the *SSLR Order*, then MSV requested a waiver of the bond requirement for these same reasons. *Id.* at 9-10. Moreover, MSV requested a waiver of the bond requirement because its replacement satellite will continue to provide important public safety services, which the Commission has provided as an independent basis for a waiver of the bond. *Id.* at 10.

On November 14, 2003, EchoStar filed a letter objecting to MSV's request. *See EchoStar Letter*.<sup>4</sup> EchoStar currently has an application pending for certain Planned Ku-band

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<sup>3</sup>*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, FCC 03-102 (adopted April 23, 2003) ("*SSLR Order*").

<sup>4</sup>EchoStar claims that its letter is an "Opposition" filed pursuant to Section 1.45(b) of the Commission's rules. 47 C.F.R. § 1.45(b); *EchoStar Letter* at 1. To the extent necessary, MSV requests a waiver of Section 1.45(c) of the Commission's rules which requires a Reply to such an Opposition to be filed within five days (in this case, by Friday, November 21). 47 C.F.R. § 1.45(c). Good cause exists for this waiver. 47 C.F.R. § 1.3. First, MSV was served by mail and the Commission's rules generally allow an additional three business days to respond in such instances, in which case MSV's Reply would be timely filed today, November 26, 2003. 47 C.F.R. § 1.4(h). Second, affording MSV an additional three business days to reply will facilitate the development of a complete record for the Bureau to review and will not prejudice any party.

frequencies at 101°W that is “second-in-line” behind MSV’s replacement application.<sup>5</sup> This application was filed 27 months after the cut-off date for applications to be considered together with MSV’s replacement application.<sup>6</sup> Moreover, MSV has demonstrated that the Bureau should promptly dismiss EchoStar’s application because it is substantively deficient and its proposed operations violate the Commission’s policies for use of the Planned Ku-band.<sup>7</sup>

In its letter, EchoStar argues that (i) the Commission did not grandfather pending applications from the new bond requirement and the Commission can apply its rules retroactively to pending applications (*EchoStar Letter* at 2-4); (ii) if the Bureau were to refrain from applying the bond to MSV, it would have to waive the requirement for all other pending applications (*id.* at 6); (iii) MSV is responsible for the delay in the grant of its application (*id.* at 6-7); (iv) the costs of a bond are low (*id.* at 4); and (v) MSV can withdraw its request for non-replacement frequencies to avoid the bond (*id.* at 2). MSV refutes each of these points below and also notes EchoStar’s silence regarding MSV’s commitment to continue providing public safety services with its replacement satellite, which is an independent basis for waiver of the bond.

## Discussion

### I. The Bureau Has the Discretion to Refrain from Imposing the Bond Requirement to Pending Applications and Should Exercise that Discretion in the Case of MSV

EchoStar makes the irrelevant argument that the *SSLR Order* did not generally grandfather all pending applications from the bond requirement. *EchoStar Letter* at 2-3. MSV does not dispute this. What EchoStar fails to acknowledge, however, is that the Commission also did not state that the bond requirement would apply to all pending applications. Rather, the Commission stated that the new bond requirement would apply to pending applications only if

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<sup>5</sup>Application of EchoStar Satellite Corporation, File No. SAT-LOA-20030827-00179 (filed August 27, 2003) (“*EchoStar Application*”).

<sup>6</sup>The Bureau placed MSV’s replacement application on Public Notice on March 19, 2001. *See Public Notice*, Report No. SAT-00066 (March 19, 2001). Competing applications were due 30 days later on April 18, 2001. No entity filed a competing application.

<sup>7</sup>Specifically, MSV demonstrated in its Petition to Deny that EchoStar’s application should be promptly dismissed on three independent grounds: (i) it is mutually exclusive with MSV’s “first-in-line” application for Planned Ku-band frequencies at 101°W; (ii) it proposes a GSO satellite for domestic service without requesting a waiver of footnote NG104 that limits use of the Planned Ku-band by GSO satellites to only “international systems;” and (iii) the unlimited deployment of earth stations that EchoStar proposes violates the Commission’s policy of limiting the number of earth stations operating in the Planned Ku-band to avoid burdening licensees of terrestrial systems that share the band. *See Mobile Satellite Ventures Subsidiary LLC, Petition to Deny*, File No. SAT-LOA-20030827-00179 (November 17, 2003).

“doing so will help further the goals of this proceeding to expedite service to the public and discourage speculation.” *SSLR Order* ¶ 275.<sup>8</sup>

An application for a replacement satellite that proposes additional, non-replacement frequencies in the same or extended band, such as MSV’s, is precisely the type of application where speculation and warehousing are not concerns and thus the Bureau can refrain from applying the bond. *See MSV Letter* at 7-8.<sup>9</sup> EchoStar is alone in its support for applying the bond to a replacement satellite that requests additional, non-replacement frequencies in the same or extended band. As the Satellite Industry Association (which includes Intelsat, a proponent of the bond requirement) and others have explained on reconsideration of the *SSLR Order*, an applicant for a replacement satellite that requests additional frequencies in the same or extended band will have every incentive to build the proposed satellite in order to continue and enhance service to its customers.<sup>10</sup> Thus, the same reasoning that led the Commission to exempt replacement satellites from the bond requirement applies equally well to replacement satellites such as MSV’s that will use additional frequencies in the same band. *SIA SSLR Petition* at 19; *SES SSLR Petition* at 22.<sup>11</sup>

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<sup>8</sup>The Bureau has exercised this discretion in refraining from applying the bond requirement to Ku-band NGSO applications. *See* “Frequently Asked Questions on the First Space Station Reform Order,” Question 30 (distributed at public forum held at FCC on July 8, 2003).

<sup>9</sup>Most of EchoStar’s letter argues that the Commission can apply its rules retroactively to pending applications. *EchoStar Letter* at 3-4. Regardless of whether this is the case (and MSV does not concede that it is), it is apparent that the Bureau retains the discretion to refrain from applying the bond to MSV’s replacement satellite.

<sup>10</sup>*See* Petition for Reconsideration and Clarification and Comments of the Satellite Industry Association (“SIA”), IB Docket No. 02-34 (September 26, 2003), at 19-20 (“[A]s with all replacement satellites, the licensee has an incentive to build the satellite in order to continue and enhance service to its customers.”) (“*SIA SSLR Petition*”); Petition for Reconsideration and Comments of SES Americom, Inc. (“SES”), IB Docket No. 02-34 (September 26, 2003), at 21-23 (“An operator seeking to replace a satellite to continue and enhance its services from its assigned orbital location is unlikely to be seeking to add spectrum within the band or in the extended band for speculative reasons.”) (“*SES SSLR Petition*”); Comments of Space Imaging, LLC, IB Docket No. 02-34 (November 6, 2003), at 10-12 (“Applying for a replacement satellite that incorporates additional spectrum within the same band does not suggest any speculative motive whatsoever; rather, it reflects a legitimate need for additional spectrum resources to improve services to meet consumer demands.”) (“*Space Imaging Comments*”).

<sup>11</sup>MSV notes that EchoStar did not oppose the Petitions for Reconsideration of the *SSLR Order* filed by SIA and SES, both of which urged the Commission to refrain from applying the bond requirement to replacement satellites that request additional frequencies in the same or extended band.

## II. MSV's Request Is Unique

EchoStar argues that if the Bureau were to refrain from applying the bond to MSV's replacement satellite, the Bureau would have to waive the bond requirement for all other pending applications. *EchoStar Letter* at 6. This is absolutely false. As MSV stated in its letter, its pending application is the only one in the Bureau's satellite queue initially filed prior to the effective date of the *SSLR Order* (August 27, 2003) that requests approval for a replacement satellite that will use additional, extended-band frequencies. *MSV Letter* at 2, 9. EchoStar does not dispute this fact. Thus, should the Bureau find that MSV's replacement application does not raise speculation or warehousing concerns and accordingly exercises its discretion to refrain from applying the bond, there is no other pending application that will benefit from this decision.

## III. MSV Is Not Responsible for the Delay in the Processing of Its Application

Given that MSV's application was ripe for grant for two years before the Commission revised its licensing policies, MSV explained that, as a matter of policy, fairness dictates that the Bureau refrain from applying the bond to MSV's replacement satellite. *MSV Letter* at 2, 8-9, 10. In response, EchoStar argues that MSV is responsible for the delay in the processing of its application because it has filed three amendments to this application. *EchoStar Letter* at 6-7.

EchoStar's argument is misleading and inaccurate. Since MSV originally filed its replacement application over five years ago in July 1998, it has filed three amendments. The first was filed on December 14, 2000.<sup>12</sup> The second amendment was filed on March 2, 2001.<sup>13</sup> The Bureau subsequently placed MSV's replacement application as amended on Public Notice on March 19, 2001.<sup>14</sup> The pleading cycle on this application closed on May 21, 2001. MSV's application for a replacement satellite was essentially unopposed.<sup>15</sup> The third and most recent amendment was a minor amendment filed eight days ago on November 18, 2003 to reflect revised technical parameters for the proposed replacement satellite.<sup>16</sup> Thus, *thirty months*

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<sup>12</sup>See Application of Motient Services Inc., SAT-AMD-20001214-00171 (December 14, 2000) (requesting additional Planned Ku-band feeder link frequencies).

<sup>13</sup>See Application of Motient Services Inc. and Mobile Satellite Ventures Subsidiary LLC, File No. SAT-ASG-20010302-00017 *et al.* (March 2, 2001) ("*MSV Replacement Application*").

<sup>14</sup>See *Public Notice*, Report No. SAT-00066 (March 19, 2001).

<sup>15</sup>As MSV indicated in its letter, no one objected to MSV's request to operate its replacement satellite using additional Planned Ku-band spectrum for feeder links and only one party, KITComm Satellite Communications Ltd. ("KITComm"), objected to MSV's request to operate its replacement satellite throughout the entire L-band. *MSV Letter* at 4 n.6. MSV has addressed KITComm's objection. See *id.*

<sup>16</sup>See Minor Amendment of Mobile Satellite Ventures Subsidiary LLC, File No. SAT-AMD-20031118-00335 (November 18, 2003).

elapsed between the end of the pleading cycle on MSV's unopposed replacement application in May 2001 and the filing of this recent minor amendment in November 2003. Had MSV's application been granted in the twenty-nine months between the end of the pleading cycle in May 2001 and the effective date of the bond requirement in October 2003, MSV would not be subject to the multi-million dollar bond requirement.<sup>17</sup> Over 2½ years is a reasonable amount of time for the Bureau to grant an unopposed replacement application. Indeed, as MSV noted in its letter, since MSV's replacement application was originally filed, other replacement applications that requested new, "non-replacement" frequencies have been filed and granted without a bond requirement.<sup>18</sup>

#### **IV. The Bond Requirement Imposes Substantial Costs on MSV's Development of a Replacement System**

EchoStar cites Comments filed by Intelsat to support the contention that the cost of a bond is "relatively low." *EchoStar Letter* at 4. Intelsat's view has been refuted by other satellite operators that have demonstrated that the true cost of the bond is still unclear but will certainly be much higher than what Intelsat estimates.<sup>19</sup> In any event, it is clear that the bond requirement will increase a satellite licensee's costs to a significant extent and will affect the valuation and credit rating of the licensee.<sup>20</sup> Surety companies may even refuse to issue bonds at all absent full collateralization of the bond amount. *SES SSLR Reply* at 6. As SES has explained:

Given the already challenging market for raising capital for satellite ventures, the extra capitalization required upfront, along with the bond fees, could easily result in keeping legitimate smaller and/or new applicants from bringing additional competition or new technologies and services to the satellite markets. *SES SSLR Petition* at 8.

Particularly in a case such as MSV's where the bond is not required to deter speculation or warehousing, the costs of imposing the bond far outweigh any purported benefits.

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<sup>17</sup>The bond requirement became effective on October 27, 2003. *See* 68 FR 59127 (October 14, 2003).

<sup>18</sup>*See, e.g., Columbia*, 16 FCC Rcd 4725 (Chief, Sat. Div., Feb. 27, 2001) (Columbia's application for a replacement C-band satellite that would also operate in the extended C-band was filed in April 2000 and granted in February 2001); *Panamsat*, 17 FCC Rcd 10483 (Chief, Sat. Div., May 30, 2002) (PanAmSat's application for a replacement C/Ku-band satellite that would also operate in the extended C-band and extended Ku-band was filed in August 1999 and granted in May 2002).

<sup>19</sup>*See Reply of SES Americom Inc., IB Docket No. 02-34* (November 19, 2003), at 4-7 ("*SES SSLR Reply*"); *see also SES SSLR Petition* at 7-8; *Petition for Reconsideration of Boeing, Hughes, Iridium, Lockheed Martin, Loral, MSV, PanAmSat, and SES, IB Docket No. 02-34* (September 26, 2003), at 10, 13-14 ("*Coalition SSLR Petition*").

<sup>20</sup>*Coalition SSLR Petition* at 10-16; *SES SSLR Petition* at 3-8; *SES SSLR Reply* at 4-7; *Space Imaging Comments* at 4-7.

## V. MSV Needs Access to Additional, “Non-Replacement” Frequencies

EchoStar suggests that, if MSV wants to avoid the bond requirement, it can withdraw its request for additional frequencies. *EchoStar Letter* at 2. This is convenient for EchoStar to suggest since it is second-in-line behind MSV for certain Planned Ku-band frequencies at 101°W and thus (but for the fatal deficiencies in EchoStar’s proposed non-conforming use of the frequencies (*see supra* note 7)) would benefit from MSV’s withdrawal. EchoStar, however, fails to refute that MSV needs access to these additional, “non-replacement” feeder link frequencies in order to accommodate the increase in traffic expected with its next-generation, higher-capacity, spot-beam satellite. *MSV Letter* at 8.

Moreover, as MSV explained in its letter, as a GSO MSS operator already using part of the Planned Ku-band for feeder links at 101°W, MSV is uniquely positioned to make the most expeditious use of the additional Planned Ku-band frequencies it has requested. *MSV Letter* at 8. EchoStar does not refute this. The Commission only permits use of the Planned Ku-band by GSO satellite systems that use a minimal number of earth stations in order to avoid burdening terrestrial operators that share the band with coordination requirements.<sup>21</sup> The Commission has recognized that the Planned Ku-band is ideally suited for MSS feeder links because this entails the use of only a small number of earth stations.<sup>22</sup> Conversely, the type of operations that EchoStar has proposed for the Planned Ku-band, which entails ubiquitous deployment of earth stations, has already been rejected by the Commission. *See Ku-band NGSO FSS Order* ¶¶ 29, 71. Thus, even if MSV were to withdraw its request for “non-replacement,” extended-band frequencies in the Planned Ku-band, it is unlikely any other operator would be able to make appropriate and expeditious use of these frequencies.

## VI. EchoStar Does Not Dispute MSV’s History of and Commitment to Providing Public Safety Services, Which Is an Independent Basis for Waiver of the Bond

The Commission has stated that it will consider waivers of the bond requirement for satellite operators “proposing satellites designed to provide public safety services.” *SSLR Order* ¶ 169. MSV and others in the record of this application proceeding and the related Ancillary Terrestrial Component (“ATC”) rulemaking proceeding have demonstrated that MSV’s current and replacement satellites satisfy this criterion.<sup>23</sup>

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<sup>21</sup>*See First Report and Order*, 16 FCC Rcd 4096, ¶¶ 29, 71 (2000) (“*Ku-band NGSO FSS Order*”); *Boeing, Order and Authorization*, DA 03-2073, at ¶¶ 14-16 (Chief, Int’l Bur. and Chief, OET, June 24, 2003); *see also Order and Authorization*, 15 FCC Rcd 3385, ¶¶ 12-16 (Chief, Sat. Div., 1999) (discussing use of the extended Ku-band which is also subject to footnote NG104).

<sup>22</sup>*Notice of Proposed Rulemaking*, 14 FCC Rcd 4843 (1999), at ¶53.

<sup>23</sup>*See MSV Letter* at 10; *MSV Replacement Application* at 12; Consolidated Opposition of MSV, File No. SAT-ASG-20010302-00017 (May 7, 2001), at i-ii, 7-8, and Exhibit A (Statement of Rear Admiral M. Edward Gilbert, United States Coast Guard, Retired); Comments of MSV,

EchoStar does not dispute MSV's proven track record of providing critical public safety services nor does it question MSV's commitment to continue providing these services with its replacement system. MSV's commitment to providing public safety services is not the mere idle promise of an applicant for a new satellite license hoping to avoid the bond requirement. MSV is already providing these public safety services today with its current system and will continue to do so with its replacement satellite.

### Conclusion

For the reasons stated above, MSV requests that the Bureau refrain from imposing its new bond requirement on MSV's replacement MSS satellite at 101°W.

Very truly yours,



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IB Docket No. 01-185 (Oct. 22, 2001), at i, 9-10, and Exhibits A, B, and C; Reply Comments of MSV, IB Docket No. 01-185 (November 13, 2001), at 12; *see also* Letter from EmTRAC Project of the American Red Cross to Ms. Magalie Roman Salas, FCC, File No. SAT-ASG-20010302-00017 (April 9, 2001); Letter from Wayne Tousley, Sheriff of Twin Falls County, Idaho, to Ms. Magalie Roman Salas, FCC, File No. SAT-ASG-20010302-00017 (April 3, 2001); Letter from Sheriff's Office of Montrose County, Colorado, to Ms. Magalie Roman Salas, FCC, File No. SAT-ASG-20010302-00017 (April 10, 2001); Letter from State of Washington, Department of Social and Health Services, to Ms. Magalie Roman Salas, FCC, File No. SAT-ASG-20010302-00017 (March 26, 2001); Letter from Virgil Fernandez, Fire Marshall, City of Miami to Ms. Magalie Roman Salas, FCC, File No. SAT-ASG-20010302-00017 (March 28, 2001); Letter from Yurok Tribe to Ms. Magalie Roman Salas, FCC, File No. SAT-ASG-20010302-00017 (September 24, 2001).



Ms. Marlene H. Dortch

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