

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Mobile Satellite Ventures)
Subsidiary LLC)

Application for Authority to Launch)
and Operate a Replacement L-band)
Mobile Satellite Service Satellite)
at 101° W)

) 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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Policy Branch
International Bureau

To: International Bureau

OPPOSITION TO MOTION TO STRIKE REPLY

EchoStar Satellite L.L.C. ("EchoStar") hereby files this Opposition to Mobile Satellite Ventures Subsidiary LLC's ("MSV's") Motion to Strike Reply of EchoStar Satellite L.L.C.¹

As set forth in the MSV Motion, the EchoStar Reply to MSV's Opposition to EchoStar's Petition for Clarification and/or Reconsideration ("EchoStar Petition") was filed on July 21, 2005.² The EchoStar Petition for Clarification and/or Reconsideration was timely filed in response to the Bureau's decision granting MSV a license to launch and operate a Mobile Satellite Service ("MSS") satellite.³ MSV argues that the actual deadline for filing the EchoStar Reply was July 19, 2005, not July 21, 2005. Counsel for EchoStar acknowledges that its Reply

¹ See MSV Motion to Strike Reply of EchoStar Satellite L.L.C. (filed August 1, 2005) ("MSV Motion").

² See EchoStar Reply (July 21, 2005).

³ See *In the Matter of Mobile Satellite Ventures Subsidiary LLC*, DA 05-1492 (rel. May 23, 2005) ("MSV Order").

was filed two days late due to a good faith miscalculation. Because the two day delay in filing resulting from this innocent error did not give rise to any conceivable prejudice for MSV, there is ample good cause for the Bureau to accept the EchoStar Reply and deny the MSV Motion.

By Commission Rule 1.106(h), 47 C.F.R. § 1.106(h), EchoStar had seven (7) days to file a reply after any opposition was filed to the EchoStar Petition.⁴ Commission Rule 1.4(g), 47 C.F.R. § 1.4(g), states that if a filing period is "**less than 7 days**" then intervening holidays (which include weekends) are not included in the calculation of the filing deadline for the reply.⁵ At the time when calculating the deadline for its reply, counsel for EchoStar inadvertently read Commission Rule 1.4(g) as if it stated "**7 days or less,**" as opposed to "less than 7 days." As a result, in calculating the deadline for the EchoStar Reply, weekend days were excluded in the calculation. This resulted in the calculation of the deadline of July 21, 2005, as opposed to the correct deadline of July 19, 2005. Counsel for EchoStar firmly believed that its Reply was timely filed when submitted on July 21, 2005. Counsel for EchoStar only recognized its miscalculation of the deadline upon reading the MSV Motion.

EchoStar recognizes that late-filed pleadings are not routinely accepted by the Commission without good cause.⁶ EchoStar respectfully submits that its miscalculation in this matter was inadvertent, and not intended to somehow deceive MSV or the Bureau.⁷ Further, as a result of the miscalculation by counsel, there has not been undue prejudice to MSV. The late-

⁴ See 47 C.F.R. § 1.106(h).

⁵ See 47 C.F.R. § 1.4(g).

⁶ See 47 C.F.R. § 1.46(a).

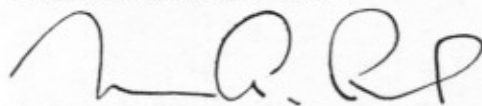
⁷ See *In the Matter of Lockheed Martin Corporation et al.*, 18 FCC Rcd. 16605, 16611 (2003) (dismissing a late-filed reply where it appeared a party intentionally filed its reply late, intentionally did not seek leave to file a late-filed pleading and did not serve the reply on parties to the proceeding).

filed pleading by EchoStar was not a pleading that initiated adjudicatory action against MSV -- the EchoStar Petition doing so was timely filed. Even without EchoStar's Reply, a timely Petition of the *MSV Order* remains pending before the Bureau. Further, the Commission's Rules do not contemplate an additional pleading by MSV in response to EchoStar's Reply. As a result, the two day delay in filing EchoStar's Reply has not hindered or affected MSV's ability to file a pleading in this matter. In contrast, rejecting the EchoStar Reply would result in an incomplete record in this matter.⁸

EchoStar respectfully requests that its late-filed Reply be accepted by the Bureau and the MSV Motion rejected. Acceptance of EchoStar's Reply will not unduly prejudice MSV and will ensure a complete record in contemplation of the EchoStar Petition that has been timely filed.

Respectfully submitted,

EchoStar Satellite L.L.C.



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August 5, 2005

⁸ Late-filed pleadings have been accepted for purpose of creating a complete record in a proceeding. *See, e.g., In the Matter of Loral Satellite, Inc. and Loral Spacecom Corporation et al.*, 19 FCC Rcd. 2404, 2411 (2004) (accepting a late-filed petition filed with the International Bureau in order to create a "full and complete factual record"); *see also In the Matter of Application of Verizon Hawaii, Inc. et al.*, 19 FCC Rcd. 24110, 24111 (2004) (finding that the Wireless Bureau has "discretion to accept late-filed pleadings to develop a complete record").

CERTIFICATE OF SERVICE

I, Marc A. Paul, an attorney with the law firm of Steptoe & Johnson LLP, hereby certify that on this 5th day of August, 2005, served a true copy of the foregoing "Opposition to Motion to Strike Reply" by hand delivery (or as otherwise indicated) upon the following:

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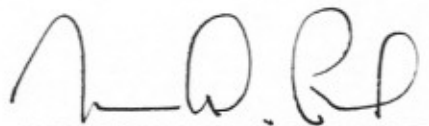
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