

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
EchoStar Satellite Operating Corporation )
Application for Authority to Construct, Launch and ) File Nos. SAT-LOA-20020328-00050
Operate a 17/24 GHz Direct Broadcasting-Satellite ) SAT-AMD-20050118-00247
Service Space Station, EchoStar EX-3, at the 79° ) SAT-AMD-20080114-00020
W.L. Orbital Location ) SAT-AMD-20080213-00043
Call Sign: S2440
Application for Authority to Construct, Launch and ) File Nos. SAT-LOA-20020328-00051
Operate a 17/24 GHz Direct Broadcasting-Satellite ) SAT-AMD-20050118-00246
Service Space Station, EchoStar EX-1, at the 110.4° ) SAT-AMD-20080114-00019
W.L. Orbital Location ) SAT-AMD-20080213-00042
Call Sign: S2441
Application for Authority to Construct, Launch and ) File Nos. SAT-LOA-20020328-00052
Operate a 17/24 GHz Direct Broadcasting-Satellite ) SAT-AMD-20051118-00245
Service Space Station, EchoStar EX-2, at the 107° ) SAT-AMD-20080114-00020
W.L. Orbital Location ) SAT-AMD-20080213-00043
Call Sign: S2442
Application for Authority to Construct, Launch and ) File Nos. SAT-LOA-20070105-00001
Operate a 17/24 GHz Direct Broadcasting-Satellite ) SAT-AMD-20080114-00021
Service Space Station, EchoStar EX-5, at the 62.15° ) Call Sign: S2723
W.L. Orbital Location )
Application for Authority to Construct, Launch and ) File Nos. SAT-LOA-20070105-00003
Operate a 17/24 GHz Direct Broadcasting-Satellite ) SAT-AMD-20080114-00022
Service Space Station, EchoStar EX-4, at the 75° ) SAT-AMD-20080213-00045
W.L. Orbital Location ) Call Sign: S2725
Hughes Network Systems, LLC )
Application for Authority to Construct, Launch and ) File Nos. SAT-LOA-20111223-00248
Operate a Ka-Band and V-Band Geostationary Orbit ) Call Sign: S2852
Space Station, Jupiter 77W, at the 77.3° W.L. Orbital )
Location )

ORDER

Adopted: March 15, 2016

Released: March 15, 2016

By the Chief, Satellite Division, International Bureau:

## I. INTRODUCTION

1. In this Order, pursuant to the Commission's decision in the *Comprehensive Review of Licensing and Operating Rules for Satellite Services*,<sup>1</sup> the International Bureau (Bureau) issues waivers of the milestone requirements in Section 25.164<sup>2</sup> in the above-captioned cases involving previously surrendered licenses and authorizations with interim milestone determination requests that remain pending.<sup>3</sup> In each case, we now: (1) waive the requirements of Section 25.164 for the interim milestone showing submitted by each party; (2) permit the operators to reduce the applicable bonds; and (3) require payment of the remaining bond amounts as specified below.

## II. BACKGROUND

2. On December 17, 2015, as part of a larger Part 25 streamlining effort, the Commission adopted an order revising the milestone and bond requirements for recipients of geostationary orbit (GSO) and nongeostationary orbit (NGSO) satellite system authorizations.<sup>4</sup> In particular, the Commission eliminated all milestones under Section 25.164 except the final milestone: to launch and operate.<sup>5</sup>

3. The Commission also noted that there are a number of interim milestone determination requests pending for licenses and authorizations that had been surrendered sometime after the submission of those pending requests.<sup>6</sup> In these requests, the then-licensed parties sought findings that they had satisfied one or more of their milestones, in order for their bonds to be reduced. In the *2015 Part 25 Streamlining Order*, the Commission found that “[p]rocessing these requests as required by Section 25.164 is extraordinarily time-consuming and resource-intensive. . . . [a]nd, each of these licenses and grants has been surrendered and made available to others, thus minimizing ‘warehousing’ concerns. Accordingly, we direct the International Bureau to dispose of these pending milestone determination requests by waiving the requirements of Section 25.164 as needed.”<sup>7</sup> Finally, the Commission noted that these parties would forfeit the portion of their bonds associated with milestones for which the party had not submitted a showing of compliance.<sup>8</sup>

## III. DISCUSSION

4. The Commission may waive its rules for good cause.<sup>9</sup> As noted in the *2015 Part 25 Streamlining Order*, waiver is appropriate if special circumstances warrant a deviation from the general

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<sup>1</sup> See *Comprehensive Review of Licensing and Operating Rules for Satellite Service*, Second Report and Order, FCC 15-167 (Dec. 17, 2015) (*2015 Part 25 Streamlining Order*).

<sup>2</sup> 47 CFR § 25.164.

<sup>3</sup> See *EchoStar Corporation*, IBFS File Nos. SAT-LOA-20020328-00052, SAT-LOA-20020328-00051, SAT-LOA-20070105-00001, SAT-LOA-20070105-00003, SAT-LOA-20020328-00050; *Hughes Network Systems, LLC*, IBFS File No. SAT-LOA-20111223-00248.

<sup>4</sup> See generally, *2015 Part 25 Streamlining Order*.

<sup>5</sup> *Id.* at paras. 51, 63.

<sup>6</sup> See *id.* at paras. 87-89.

<sup>7</sup> *Id.* at para. 87.

<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. § 1.3.

rule, and the deviation will serve the public interest.<sup>10</sup> In addition, the Bureau may grant a waiver of its rules in a particular case if the relief requested would not undermine the objective of the rule in question.<sup>11</sup> Specifically, the objectives of the milestones in Section 25.164 include: (1) ensuring that licensees provide service to the public in a timely manner by preventing the warehousing of scarce orbit and spectrum resources;<sup>12</sup> (2) deterring speculative license applications;<sup>13</sup> and (3) ensuring that our satellite licensees fulfill their obligation to build their systems.<sup>14</sup>

5. There is good cause to waive the milestone requirements of Section 25.164 in these pending cases. Significantly, all of the licenses and authorizations at issue here were surrendered long ago and the spectrum resources made available for reassignment.<sup>15</sup> As a result, conducting the detailed evaluations required to make determinations on the merits for each of these milestone showings would consume scarce Commission resources without causing service to become available to the public any faster. Furthermore, under these circumstances, we do not believe that our decision to forego such an evaluation will undermine the deterrent effects that strictly enforcing compliance with the interim milestones are designed to have, *i.e.*, ensuring that our satellite licensees fulfill their obligations to build out and begin service to the public in a timely manner. Thus, given these considerations, along with the Commission's determination that the interim milestones are no longer necessary,<sup>16</sup> we see little public interest benefit in going through the exercise of conducting a substantive evaluation of the pending requests. Accordingly, in implementing the Commission's directive,<sup>17</sup> we find good cause to waive the requirements of Section 25.164 with respect to the pending milestone determinations in the above-captioned cases.<sup>18</sup> The impact of this waiver finding in each case is enumerated below.

**A. EchoStar Satellite Operating Corporation**

**1. Call Signs S2441 and S2442**

6. EchoStar Satellite Operating Corporation (EchoStar) has previously surrendered these two authorizations,<sup>19</sup> but EchoStar's contract milestone showing filed pursuant to Section 25.164 remains pending in each case.<sup>20</sup> As discussed above, and consistent with the Commission's decision in the

<sup>10</sup> *2015 Part 25 Streamlining Order*, at ¶ 88, citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>11</sup> *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc.*, Order and Authorization, 14 FCC Rcd 8182, 8185, para. 5 (Int'l Bur. 1999).

<sup>12</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10827, para. 173 (2003) (*Space Station Licensing Reform Order*).

<sup>13</sup> *Id.* at 10828, para. 175.

<sup>14</sup> *Id.* at 10834, para. 196.

<sup>15</sup> *2015 Part 25 Streamlining Order* at paras. 59-61, 89.

<sup>16</sup> *See id.* at paras. 59, 61.

<sup>17</sup> *See supra*, para. 3.

<sup>18</sup> *See 2015 Part 25 Streamlining Order* at paras. 88-89.

<sup>19</sup> Letter from Pantelis Michalopoulos and Christopher Bjornson, Counsel for EchoStar Corporation and EchoStar Satellite Operating Corporation, to Marlene H. Dortch, Secretary, FCC, dated May 24, 2011 (*Surrender Letter*).

<sup>20</sup> As required by the terms of these authorizations and Section 25.165, EchoStar posted a \$3 million bond for each authorization within 30 days of grant. *See* 47 CFR § 25.165. Following the grant of its authorizations, EchoStar made a showing that it had met the contract milestone requirement for these authorizations. *See* Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Operating Corporation, to Marlene H. Dortch, Secretary, FCC, filed (continued....)

*Order*,<sup>21</sup> the Bureau waives the requirement in Section 25.164(a)(1) with respect to EchoStar's milestone showings, and permits EchoStar to reduce the bonds in each case by \$750,000. The remaining amount of each bond (\$2.25 million each) is due and payable to the U.S. Treasury upon written notice from the Commission's Office of Managing Director (OMD).

## 2. Call Signs S2440, S2723, and S2725

7. EchoStar has previously surrendered these three authorizations,<sup>22</sup> but the contract and critical design review (CDR) milestone showings filed pursuant to Section 25.164 remain pending.<sup>23</sup> As discussed above, and consistent with the Commission's decision in the *Order*,<sup>24</sup> the Bureau waives the requirements in Section 25.164(a)(1) and (2) with respect to EchoStar's milestone showings, and permits EchoStar to reduce the bond amount owed in each case by \$1.5 million. The remaining amount of each bond (\$1.5 million each) is due and payable to the U.S. Treasury upon written notice from OMD.

## B. Hughes Network Systems, LLC (Call Sign S2852)

8. Hughes Network Systems, LLC (Hughes) has previously surrendered this authorization,<sup>25</sup> but Hughes' contract milestone showing filed pursuant to Section 25.164 remains pending.<sup>26</sup> As discussed above, and consistent with the Commission's reasoning in the *Order*,<sup>27</sup> the Bureau grants a waiver of the requirement in Section 25.164(a)(1), and permits Hughes to reduce the bond in this case by \$750,000. The remaining amount of the bond (\$2.25 million) is payable to the U.S. Treasury upon written notice from OMD.

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on July 28, 2010 (Call Signs S2441 and S2442) (submitting copies of the satellite construction contracts and requesting confidential treatment for certain portions of each contract); *see also* letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, FCC, to Pantelis Michalopoulos, Esq., Counsel for EchoStar Satellite Operating Corporation, dated July 21, 2011 (acknowledging that EchoStar had submitted construction contracts in March, April and July of 2010 to show it had met the contract milestone for each authorization) (*FCC July 21 Letter*).

<sup>21</sup> *See 2015 Part 25 Streamlining Order* at paras. 88-89.

<sup>22</sup> *See generally, Surrender Letter*.

<sup>23</sup> *See* letters from Pantelis Michalopoulos, Counsel for EchoStar Satellite Operating Corporation, to Marlene H. Dortch, Secretary, FCC, filed on March 18, 2010 (Call Sign S2725), March 13, 2010 (Call Sign S2723), and April 20, 2010 (Call Sign S2440) (submitting copies of the satellite construction contracts and requesting confidential treatment for certain portions of each contract); *see also* letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Operating Corporation, to Marlene H. Dortch, Secretary, FCC, dated Aug. 22, 2011 (filing additional materials showing CDR milestone compliance); *FCC July 21 Letter*.

<sup>24</sup> *See 2015 Part 25 Streamlining Order* at paras. 88-89.

<sup>25</sup> Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, dated Aug. 1, 2014 (surrendering its authorization to launch and operate a Ka-band geostationary Fixed Satellite Service space station at the 77.3° W.L. orbital location).

<sup>26</sup> *See* Demonstration of Compliance with First Satellite Implementation Milestone at 2-3, dated August 2, 2013 (claiming it met the first milestone requirement); *see also* Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, LLC to Lynne Montgomery, Attorney-Advisor, International Bureau, FCC, dated Sept. 26, 2014. Hughes filed a notice of its \$3 million dollar surety bond with the Commission on August 25, 2012. *See* Hughes S2852 Surety Bond SAT-LOA-20111223-00248 (filing a copy of Bond No. 09084854 with no cover letter).

<sup>27</sup> *2015 Part 25 Streamlining Order* at paras. 88-89.

**V. CONCLUSION AND ORDERING CLAUSES**

9. Accordingly, IT IS ORDERED that the interim milestone requirements of Section 25.164 are hereby WAIVED in the above captioned cases, Call Signs S2440, S2441, S2442, S2723, and S2725 with respect to EchoStar Satellite Operating Company, and EchoStar Satellite Operating Company may reduce its bond in each case to the extent described herein.


10. IT IS FURTHER ORDERED that the remainder of EchoStar Satellite Operating Company's bonds, a total of \$9 million in the above-captioned cases, Call Signs S2440, S2441, S2442, S2723, and S2725, are now due and payable to the U.S. Treasury.

11. IT IS FURTHER ORDERED that that the interim milestone requirements of Section 25.164 are hereby WAIVED in the above-captioned case, Call Sign: S2852, with respect to Hughes Network Systems, LLC, and Hughes Network System, LLC may reduce its bond to the extent described herein.

12. IT IS FURTHER ORDERED that the remainder of Hughes Network Systems, LLC's bond, \$2.25 million in the above-captioned case, Call Sign S2852, is now due and payable to the U.S. Treasury.

13. This action is taken under delegated authority pursuant to Section 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51, 0.261.

FEDERAL COMMUNICATIONS COMMISSION

  
Jose P. Albuquerque  
Chief, Satellite Division  
International Bureau