



February 24, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: 17/24 GHz BSS Milestone Compliance
File Nos. SAT-LOA-20020328-00050, SAT-LOA-20020328-00051, SAT-LOA-
20020328-00052, SAT-LOA-20070105-00001, SAT-LOA-20070105-00003 & SAT-
ASG-20110224-00034
Call Signs S2440, S2441, S2442, S2723 & S2725

Dear Ms. Dortch:

EchoStar Satellite Operating Corporation (together with its affiliates, "EchoStar") submits this supplemental letter as a follow-up to discussions with International Bureau ("IB") staff regarding milestone showings and the above-referenced surrendered 17/24 GHz Broadcasting-Satellite Service ("BSS") licenses.¹ As this letter shows, the five contracts under review meet the FCC's contract milestone requirement.²

As required under Section 25.164(c) of the FCC's rules,³ EchoStar submitted on a timely basis copies of five binding, non-contingent contracts with Space Systems/Loral, Inc., dated between March and July 2010, to construct 17/24 GHz BSS satellites.⁴ Each contract meets the

¹ See Letter from Adam D. Krinsky, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC, File Nos. SAT-LOA-20020328-00050 *et al.* (Jan. 23, 2015).

² This letter focuses solely on the first milestone, a binding, non-contingent contract. Satisfaction of the second milestone, critical design review, will be addressed in a subsequent filing, as appropriate.

³ See 47 C.F.R. § 25.164(c).

⁴ See Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOA-20070105-00001 (Mar. 15, 2010); Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOA-20070105-00003 (Mar. 18, 2010); Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOA-20020328-00050 (Apr. 16, 2010); Letter from Pantelis Michalopoulos, Counsel to EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOA-20020328-00052 (July 28, 2010); Letter from Pantelis Michalopoulos, Counsel to EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOA-20020328-00051 (July 28, 2010) (collectively, "Contracts").

Commission's standard for a binding, non-contingent contract.⁵ Specifically, each contract contains no unresolved contingencies that could preclude satellite construction, specifies a construction schedule consistent with the FCC milestones, and requires a substantial payment for completion of each of the four FCC milestones – *i.e.*, contract execution, critical design review (“CDR”), construction commencement, and launch and operation.⁶ Accordingly, the five contracts clearly meet the requirements of Section 25.164(c) of the FCC's rules.

In response to questions from IB staff, EchoStar demonstrates here that each contract contains a schedule that meets the second milestone requirement, CDR, within two years of licensing. Specifically, each contract requires: (i) that CDR “shall occur within 12 months of program start,”⁷ (ii) that CDR “shall provide sufficient design maturity to initiate procurement of long lead parts,”⁸ and (iii) a substantial payment for CDR 11 months after the contract date and a substantial payment for long lead orders 12 months after the contract date.⁹

The Commission has previously established that procuring long lead parts is evidence of CDR completion, because such parts are required to commence the next milestone phase, physical construction of the spacecraft.¹⁰ Each contract expressly requires completion of sufficient design work to procure long lead parts 12 months after the contract date. Consequently, each contract contains a schedule that includes the steps to meet the second milestone.¹¹ Although, as staff correctly points out, each contract provides for additional design review following CDR, neither the milestone rule under Section 25.164(c) nor Commission precedent precludes such subsequent

⁵ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶ 184 (2003) (“*2003 Satellite Licensing Reform Order*”) (citing *Tempo Enterprises Inc.*, Memorandum Opinion and Order, 1 FCC Rcd 20, ¶ 7 (1986) (“*Tempo*”).

⁶ See *Tempo* ¶ 7 (“There is a contract, signed by both parties, which contains no unresolved contingencies which could preclude substantial construction of the satellites Specific satellites and their design characteristics are identified, and dates for the start and completion of construction are specified. The payment terms and schedule are described sufficiently to demonstrate the parties' investment/commitment to completion of the system. While the payments are not evenly spread through the contract term, the initial payments are significant, and the majority of payments are due during the middle phases, well before the end of the construction period. The major milestones in the construction schedule are provided, and with the payment schedule, establish the certainty of the plan and the reasonableness of its projection for timely completion.”); see also *TMI Communications and Co., L.P.*, Memorandum Opinion and Order, 19 FCC Rcd 12603, ¶ 6 (2004) (“the construction contract must set forth a specific construction schedule that is consistent with the licensee's milestones”).

⁷ See *Contracts, Statement of Work (Exh. A)*, § 2.1.4.1.

⁸ See *id.*

⁹ See *Contracts, Payment Plan (Attachment A)*.

¹⁰ See *2003 Satellite Licensing Reform Order* ¶ 191 (“Evidence of [CDR] compliance may include . . . evidence that the licensee has ordered all the long lead items needed to begin physical construction of the spacecraft.”).

¹¹ Each contract similarly satisfies the other milestone schedules as well.

design review. In fact the Commission previously allowed a licensee to modify its authorized satellite system and to conduct additional design review for its modified system nearly two years after completing CDR for the initially licensed system.¹² Thus, the Commission has allowed additional design review well after the CDR milestone date.¹³

Based upon the foregoing, EchoStar has met the necessary elements of the contract execution milestone – including a schedule to meet the second milestone – for each of its above-referenced 17/24 GHz BSS licenses. Accordingly, the FCC should find the first milestone met and reduce the associated bond amounts accordingly.

If you require additional information or have any questions, please contact the undersigned.

Sincerely,

/s/ Jennifer A. Manner

Jennifer A. Manner
Vice President, Regulatory Affairs

cc: Troy Tanner (FCC)
Jose Albuquerque (FCC)
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Stephen Duall (FCC)
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¹² See *ICO Satellite Services G.P.*, 20 FCC Rcd 9797, ¶ 23 (IB 2005). In authorizing additional CDR work after the initial CDR milestone date, the Commission found that its precedent “does not necessarily preclude grant of applications for modification of space-station design filed after the two-year CDR deadline.” *Id.* ¶ 26.

¹³ In fact, it is quite common under satellite construction practices to have design review continue throughout a substantial duration of the project. A prohibition against such review could negatively impact the successful construction of a satellite.