

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

JAN 26 2007

Federal Communications Commission
Office of the Secretary

In the matter of)	
)	
EchoStar Satellite L.L.C.)	File No. SAT-LOA-20030609-00113
)	
Application to Construct, Launch, and)	Call Sign S2454
Operate a Direct Broadcast Satellite at)	
the 86.5° W.L. Orbital Location)	

REPLY

Telesat Canada (“Telesat”) hereby replies to the Opposition to Application for Review (“Opposition”) filed by EchoStar Satellite L.L.C. (“EchoStar”) in the above-captioned proceeding.¹ EchoStar’s Opposition is most notable for its failure to address the points in Telesat’s Application for Review, all of which deal with violations of clear Commission rules and policies and WTO principles.

- EchoStar’s failure to demonstrate, and the Bureau’s failure to find, that EchoStar’s system could operate satisfactorily, and without harmful interference to other DBS systems, if all assignments in the BSS and feeder links were implemented;
- the Bureau’s grant of EchoStar’s application without a showing of coordination with existing Region 2 systems; and

¹ EchoStar’s Opposition (“Opposition”) is dated January 16, 2006, and is accompanied by a certificate of service stating that service to Telesat was made on December 29, 2006. Both dates are erroneous. To the best of Telesat’s knowledge, both dates should have read January 16, 2007.

- the Bureau's affording lesser interference protection to Canadian-licensed DBS satellites than to U.S.-licensed DBS satellites.

Indeed, given EchoStar's own opposition to the concurrent grant of the "tweener" application of Spectrum Five, LLC ("Spectrum Five")² and its opposition to its own grant and the Spectrum Five grant, as expressed in EchoStar's Comments in the Commission's pending tweener rulemaking proceeding,³ EchoStar's silence on these points was prudent.

Rather than come to grips with the substance of Telesat's Application for Review, EchoStar's position appears to be that the International Bureau's grants of tweener applications to both EchoStar and Spectrum Five⁴ were erroneous, but, if the Commission is to grant one application, it should grant the other.⁵ Obviously, the Commission cannot give credence to this position. There must be a factual basis supporting the grant of EchoStar's "tweener" application without reference to the Commission's other tweener grants. EchoStar has pointed to no such support. EchoStar's vague assertion that the deficiencies in the Bureau's *Order*⁶ demonstrated by Telesat's Application for Review are "inaccurate or more appropriately addressed in other *fora*"⁷ is hardly sufficient in this regard.

² See Application for Review of EchoStar, filed in File Nos. SAT-LOI-20050312-00062, SAT-LOI-20050312-00063 (filed Dec. 29, 2006).

³ See Comments of EchoStar, IB Docket No. 06-160 (filed Dec. 12, 2006), at 3,4,9, and 12.

⁴ *Spectrum Five, LLC*, Order and Authorization, 21 FCC Rcd 14023 (IB 2006).

⁵ See Opposition at 1-2.

⁶ *EchoStar Satellite L.L.C.*, Order and Authorization, 21 FCC Rcd 14045 (IB 2006) (the "*EchoStar Order*").

⁷ Opposition at 3.

EchoStar's Opposition largely is confined⁸ to a series of erroneous or misleading statements in support of EchoStar's incorrect assertion that Telesat's current and future coverage is limited to Canada.⁹ To set the record straight:

- The Canadian Region 2 BSS Plan entries at 72.7W, 82W and 91.1W all have CONUS coverage, as do all satellites presently operating at those locations;
- The May 2006 CAN-BSS1X and CAN-BSS2X ITU filings showing high-power Canadian beams for 82W and 91.1W merely supplement, but do not displace the existing Plan entries at those locations which include CONUS coverage;
- Triple feed antennas can be anticipated for Canadian slots at 91.1W, 82W, and 72.7W;

⁸ The only other substantive point that EchoStar even attempts to address is its claim that Commission precedent supports the Bureau's deferral of the time for EchoStar to submit its orbital debris mitigation plan. (Opposition at 3. n.8.) But the case cited by EchoStar, *contactMEO Communications, LLC*, 21 FCC Rcd 4035 (IB 2006), is not on point. There, though the applicant submitted an extensive orbital debris showing, the Commission concluded that, because the Commission had never before addressed a controlled atmospheric reentry plan, it wanted additional information, but under the circumstances allowed *contactMEO* additional time to address the questions raised. *Id.* at 4052-53. Here, by contrast, there is nothing that EchoStar suggests to be unique about its designs or plans that would justify EchoStar not meeting the Commission's application requirement, or justifying a showing that said little more than EchoStar could not provide the required information because its satellite had not been designed. Were such an answer all that is required the Commission's requirement that applicants provide an orbital debris mitigation showing would be meaningless and its prior dismissal of applications for failure to make the appropriate showing indefensible. *See, e.g., Pegasus Development DBS Corporation*, Order on Reconsideration, 21 FCC Rcd 6403 (IB 2006); *Frank R. Jazzo, Esq.*, Letter, 21 FCC Rcd 11343 (2006). *See also Disclosure of Orbital Debris Mitigation Plans*, Public Notice, 30 FCC Rcd 16278, 16279 (2005) (an orbital debris mitigation statement "must identify particular methods by which a satellite system will mitigate orbital debris, rather than presenting a generalized commitment to address orbital debris mitigation at a future date or a catalogue of potential options").

⁹ *Id.* at 3-4 and n.10.

- The Commission has authorized CONUS coverage from all three slots;
- Telesat's near term service conditions do not implicate long-term business plans and it is presumptuous for EchoStar to suggest otherwise; and
- Telesat's right and capability to operate its satellites consistent with its BSS Plan assignments and modifications are not subject to time limits; whether Telesat currently has U.S. customers, therefore, is irrelevant.

EchoStar has failed to address, much less refute, Telesat's Application for Review. Accordingly, Telesat respectfully requests that the Application for Review be granted, the *EchoStar Order* be reversed, and EchoStar's underlying application be dismissed.

Respectfully submitted,

TELESAT CANADA



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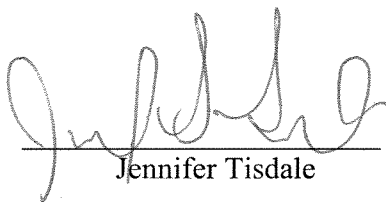
January 26, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was sent by first-class mail, postage prepaid, this 26th day of January, 2007, to the following:

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