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November 16, 2007

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

BY HAND

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

Re: EchoStar Satellite L.L.C.
File No. SAT-LOA-20030609-00113
Ex Parte

Dear Ms. Dortch:

This is to inform you that, on November 15, 2007, Robert Power of Telesat and Joseph Godles and the undersigned, representing Telesat, met with Aaron Goldberger of Chairman Martin's office. The purpose of the meeting was to provide and discuss the attached handout dealing directly with the above referenced proceeding.

Please direct any questions regarding this matter to the undersigned.

Respectfully,



Henry Goldberg
Attorney for Telesat

cc: Aaron Goldberger



Application for Review

Authorization granted to EchoStar
for a "short-spaced" (tweener) DBS satellite at
86.5W

Federal Communications Commission

November 14/15, 2007

Background



- EchoStar DBS satellite at 86.5°W would be short-spaced between two operational Telesat DBS satellites: Nimiq 1 and Nimiq 2 are located at 91°W and 82°W respectively
 - Nimiq 1 and Nimiq 2 have full-CONUS coverage consistent with the ITU Region 2 BSS Plan entries
 - Both Nimiq satellites have been previously approved by the FCC for U.S. services
 - Bell ExpressVu's DTH service occupies both satellites, and reaches 1.8 million subscribers in Canada
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EchoStar Will Interfere With Telesat



- EchoStar itself “has concluded that tweener satellites ... would pose significant interference risks to existing DBS services enjoyed by millions of consumers.” EchoStar comments on tweener NPRM, p. 6 (Dec. 12, 2006)
- EchoStar also expressed “concern[] that the International Bureau’s ... decision to proceed with granting two tweener applications, including one to EchoStar, did not sufficiently address ... fundamental [interference] issues.” EchoStar comments on tweener NPRM, p. 3 (Dec. 12, 2006).
- The International Bureau has acknowledged that “a number of administrations, including Canada, would be affected by the EchoStar-86.5W satellite.” EchoStar grant, para. 16.
- EchoStar did not dispute the validity of Telesat’s analysis demonstrating that EchoStar will interfere with Telesat
 - EchoStar only claimed it could use beam shaping and power roll-off to reduce interference potential
 - Telesat showed that these techniques do not work if there is co-coverage, as there is here

EchoStar's Application Should Have Been Dismissed



- 25.114(d)(13)(i) requires that the applicant provide a technical showing that the proposed system could operate satisfactorily if all systems in the BSS Plan were implemented.
- EchoStar did not make this showing and could not have made it



- In cases in which there are substantial interference questions, the Commission will not grant operating authority unless the applicant has coordinated with the affected system
 - The International Bureau would not grant operating authority for a Loral Orion satellite at 12° W.L. because the satellite would interfere with a Eutelsat satellite at 12° W.L. that had ITU date priority (14 FCC Rcd 17665 (1999))
 - After Loral Orion and Eutelsat entered into a coordination agreement, the International Bureau authorized Loral Orion to operate its satellite at 15° W.L. pursuant to the agreement (15 FCC Rcd 12419 (2000))
 - EchoStar has not coordinated with Telesat

Conditioning EchoStar's Grant on Coordination
with Telesat is Insufficient (cont.)



- EchoStar also has an unsatisfied coordination obligation under the Commission's DBS policies
 - When a DBS applicant submits a technical proposal that would exceed ITU threshold technical limits, as EchoStar did, the Commission has "stress[ed] that the burden shall be on the applicant to show that the agreement of the affected Administration(s) can be obtained." 17 FCC Rcd 11331, 11381 (2002).
 - In the absence of an actual agreement with potentially affected administrations, an applicant is required to demonstrate that such an agreement can be obtained, for example, by "extensive technical analyses demonstrating that the impact on the services of affected Administrations is negligible." DA 05-354, at 4 (Feb. 17, 2005)
 - EchoStar did not enter into an agreement or make the required showing
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- At a minimum the Commission should clarify that EchoStar will not be granted authority to operate prior to obtaining the agreement of affected administrations
 - Ordering clauses in the EchoStar grant are ambiguous on this point
 - Clarification will head off potential controversies with other administrations