

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

In the Matter of)
)
ECHOSTAR SATELLITE LLC)
(f/k/a EchoStar Satellite Corporation))
)
Application for Authority to Construct, Launch)
and Operate a Geostationary Satellite in the Fixed)
Satellite Service Using the Extended Ku-Band)
Frequencies at the 101° W.L. Orbital)
Location)

ORDER ON RECONSIDERATION

Adopted: December 27, 2004

Released: December 27, 2004

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we deny EchoStar Satellite LLC's (EchoStar) Petition for Reconsideration of the Satellite Division's (Division) dismissal of EchoStar's application to construct, launch, and operate a geostationary satellite in the Fixed Satellite Service (FSS) using the extended Ku-band at the 101° W.L. orbital location. We are persuaded that the Division's dismissal on the ground that EchoStar's filings were incomplete and internally inconsistent was correct.

II. BACKGROUND

2. In August 2003, EchoStar filed an application to construct, launch, and operate a satellite at the 101° W.L. orbital location that would provide Fixed-Satellite Service (FSS) in the 10.70-10.75 GHz and 11.20-11.45 GHz (downlink) and the 12.75-13.00 GHz and 13.15-13.20 GHz (uplink) frequencies.¹ In November 2003, EchoStar filed an amendment to its application outlining two system upgrades.² On February 9, 2004, the Division dismissed EchoStar's application.³ The Division found that EchoStar's

¹ Application of EchoStar Satellite Corporation for Authority to Construct, Launch, and Operate a Geostationary Satellite in the Fixed Satellite Service Using the Allotted Extended Ku-band Frequencies at the 101° W.L. Orbital Location, File No. SAT-LOA-20038027-00179, Call Sign S2492 (Application).

² Amendment to Application of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate a Geostationary Satellite in the Fixed Satellite Service Using the Allotted Extended Ku-band Frequencies at the 101° W.L. Orbital Location, File No. SAT-AMD-2003111126-00343, Call Sign S2492 (November 26, 2003) (Amendment).

³ See Letter to David K. Moskowitz, Senior Vice President and General Counsel, EchoStar Satellite Corporation, from Thomas S. Tycz, Chief, Satellite Division, International Bureau, Federal Communications Commission, 19

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amended application was not in compliance with Section 25.114(c) of the Commission's rules,⁴ which requires all space station applicants to submit all applicable items of information listed in its subsections, and Section 25.112(a)(1) of the Commission's rules,⁵ which provides that an application will be unacceptable for filing if "the application is defective with respect to completeness of answers to questions, informational showings, internal inconsistencies, execution, or other matters of a formal character."

3. Among other things, Section 25.114(c)(4) requires that each application contain information identifying which antenna beams are connected or switchable to each transponder and tracking, telemetry, and control (TT&C) function.⁶ In its Amendment, EchoStar added the ability to switch the satellite receive beam to a pair of independently steerable uplink spot beams and the ability to switch downlink transmissions from the single large coverage beam to a total of nine fixed spot beams.⁷ The Division found that EchoStar failed to provide technical information to indicate which transponders would be connected to which spot beams in either the uplink or downlink direction.⁸

4. The Division also found that EchoStar made inconsistent frequency assignment requests in its November 2003 Amendment. In both the Application and the Amendment, EchoStar stated that it was requesting authority to operate in the 10.70-10.75 GHz and 11.20-11.45 GHz frequency bands and the 12.75-13.00 GHz and 13.15-13.20 GHz frequency bands. The Channel Frequency Plan outlined in Table A.4-1 of Section A.4 of the Attachment to the Amendment, however, indicated that two transponders would operate in the 10.9515-10.9785 GHz and 10.9615-10.9885 GHz frequency bands, which were not requested in either the Application or Amendment. Moreover, the Channel Frequency Plan showed no transponders operating in the 10.70-10.75 GHz band that was requested in both the Application and Amendment. Further, in Section II of the Amendment, where EchoStar described the proposed changes to the Application, it mentioned neither the addition of new frequency bands, nor the deletion of previously requested bands.⁹ Rather, the Amendment cited only changes in the uplink service

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FCC Rcd 2216 (Int'l. Bur., Sat. Div., 2004) (*EchoStar Dismissal Letter*). We note that, on February 9, 2004, after the dismissal of EchoStar's Application and Amendment, another entity, Mobile Satellite Ventures (MSV), filed an amendment to its pending application for its next generation MSS system, requesting an additional 50 megahertz of spectrum in each direction for FSS feeder links to operate in the 10.70-10.75 GHz and 13.15-13.20 GHz frequency bands. See Mobile Satellite Ventures Subsidiary LLC, Amendment to Application for Authority to Launch and Operate a Replacement L-band Mobile Satellite Service Satellite at 101° W.L., File No. SAT-AMD-20040209-00014 (February 9, 2004) (MSV Amendment); Mobile Satellite Ventures Subsidiary LLC Amendment to Application for Authority to Launch and Operate a Replacement L-band Mobile Satellite Service Satellite at 101° W.L., Order, DA 04-2985 (released Sept. 15, 2004) (*MSV Reinstatement Order*) (A detailed history of MSV's filings in this matter is provided in the *MSV Reinstatement Order*.)

⁴ 47 C.F.R. § 25.114(c).

⁵ 47 C.F.R. § 25.112(a)(1).

⁶ We note that the *EchoStar Dismissal Letter* cites Section 25.114(c)(5) as the subsection that contains the relevant informational requirements. This section of the Commission's rules was amended in 2003, and the relevant informational requirements are now contained in Section 25.114(c)(4)(iii). See Amendment of the Commission's Space Station Licensing Rules and Policies, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 13486, 13522 (2003).

⁷ Amendment, Attachment A, Section A.1, at 1.

⁸ We note that EchoStar could have requested a waiver of the specific Section 25.114(c)(4) requirement and made an appropriate waiver showing. However, EchoStar failed to do so.

⁹ Amendment at 3.

area, the resulting receive antenna gain decreases and downlink budget modifications, and the addition of spot beams in both the uplink and downlink transmission paths.¹⁰

5. The Division further found that EchoStar did not mention new frequencies in Section A.1 of the Technical Annex to the Amendment, where it further described the proposed technical changes.¹¹ In the Amendment, EchoStar stated that none of the changes made to the design of the EchoStar-101 W satellite would increase interference to any other user of the spectrum and that the changes involved increased flexibility, increased spectrum efficiency, or both. EchoStar also stated that the satellite would use the 11.2-11.45 GHz and a portion of the 10.7-10.75 GHz band for downlink transmissions, but did not mention any use of the 10.95-11.0 GHz frequency band.¹² Moreover, in Section A.24 of the Amendment, EchoStar stated that the power flux density limits of Section 25.208 of the Commission's rules were sufficient to protect Fixed Service operations in the 10.7-10.95 GHz frequency band.¹³ Given these inconsistencies, the Division was unable to determine precisely which frequency assignments EchoStar was seeking.¹⁴

6. EchoStar filed a Petition for Reconsideration of the dismissal of its amended application.¹⁵ Mobile Satellite Ventures Subsidiary LLC (MSV) filed an Opposition to EchoStar's Petition.¹⁶ EchoStar filed a Reply to the Opposition.¹⁷

III. DISCUSSION

A. Positions of the Parties

7. In its Petition, EchoStar argues that the Division should not have dismissed its amended application because it was substantially complete as filed.¹⁸ EchoStar contends that its failure to identify which antenna beams are connected or switchable to each transponder and TT&C function does not render its amended application incomplete because this defect can be corrected without prejudice to anyone.¹⁹ EchoStar further asserts that the discrepancy in the requested frequency assignments was a typographical error that could have been resolved by looking at the application as a whole.²⁰ EchoStar states that its amended application, when viewed as a whole, indicates clearly that it did not intend to change its requested frequency assignments with the filing of the Amendment, but instead intended to use the frequencies specified in its Application.²¹ In addition, EchoStar states that the Division improperly

¹⁰ *Id.*

¹¹ See *EchoStar Dismissal Letter*, 19 FCC Rcd at 2218.

¹² Amendment at 3.

¹³ Amendment, Attachment A, Section A.24, at 26.

¹⁴ See *EchoStar Dismissal Letter*, 19 FCC Rcd at 2218.

¹⁵ Petition for Reconsideration, filed March 10, 2004 by EchoStar Satellite L.L.C. (EchoStar Petition).

¹⁶ Opposition to Petition for Reconsideration, filed March 24, 2004 by Mobile Satellite Ventures Subsidiary LLC (MSV Opposition).

¹⁷ Reply to Opposition to Petition for Reconsideration, filed April 5, 2004 by EchoStar Satellite L.L.C. (EchoStar Reply).

¹⁸ EchoStar Petition at 2-4.

¹⁹ *Id.* at 8, citing *Salzer v. FCC*, 778 F.2d 869, 872 n.7 (D.C. Cir. 1985).

²⁰ *Id.*

²¹ *Id.* at 7.

applied a letter-perfect standard in reviewing the subject amended application, rather than the "substantially complete" standard.²²

8. In its Opposition, MSV, which has a pending application to operate a satellite in, among other bands, the 10.70-10.75/13.15-13.20 GHz bands at the 101° W.L. orbit location,²³ notes that it agrees that satellite applications should be held to a "substantially complete," rather than a "letter perfect," standard.²⁴ MSV contends, however, that EchoStar's amended application was not substantially complete because it was impossible to determine with certainty which frequencies EchoStar was applying for, as well as the manner in which its transponders and antenna beams were to be connected.²⁵ Moreover, MSV asserts that the inconsistencies and omissions in EchoStar's amended application were not "minor,"²⁶ as EchoStar claims, and states that it is essential that frequencies are accurately specified in applications so that potential applicants have unambiguous notice as to which frequencies are available for assignment.²⁷ In addition, MSV notes that, if the Bureau were to adopt a policy requesting applicants to clarify ambiguous information, as EchoStar asserts the Division should have done with it, it would disserve the public interest in an expedited satellite licensing process.²⁸ Further, MSV notes that such a policy would be counter to the Commission's first-come, first-served satellite licensing framework, the primary goal of which is to expedite satellite licensing.²⁹

B. Substantially Complete Standard

9. We reject EchoStar's contention that the Division applied a "letter-perfect" standard in reviewing its amended application. In the *First Space Station Reform Order*, the Commission specifically rejected the letter-perfect standard, deciding instead to continue to require applications to be "substantially complete" when filed.³⁰ The Commission defined "substantially complete" as providing the information which is required by the Commission's rules.³¹ It explained that requiring satellite

²² *Id.* at 2-5, citing Amendment of the Commission's Space Station Licensing Rules and Policies, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3847, 3875-76 ¶ 84 (2002) (*Space Station Reform NPRM*); Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760, 10852 ¶ 244 (2003) (*First Space Station Reform Order*); and Amendment of the Rules Concerning Cut-Off Procedures for FM and TV Broadcast Stations, *Report and Order*, MM Docket No. 84-750, FCC 85-125, 50 Fed. Reg. 19936 (May 13, 1985).

²³ See MSV Amendment.

²⁴ MSV Opposition at 5.

²⁵ *Id.*

²⁶ *Id.* at 6, citing Applications of Mobile Phone of Texas, Inc. For Authority to Construct Additional Facilities in the Public Land Mobile Service on Frequency 152.09 MHz for Station KLF902 at Palo Pinto, Texas, and MCI Airsignal, Inc. For Authority to Construct Additional Facilities in the Public Land Mobile Service on Frequency 152.15 MHz for Station KKG411 at Weatherford, Texas, *Memorandum Opinion and Order*, 5 FCC Rcd 3459, 3460 n. 14 (Com. Car. Bur. 1990) (*Mobile Phone Order*).

²⁷ MSV Opposition at 6.

²⁸ *Id.*

²⁹ *Id.* at 7-8, citing Applications of PanAmSat Licensee Corp. For Authority to Construct, Launch, and Operate a Hybrid Satellite System in its Separate International Communications Satellite System, *Order on Reconsideration*, 18 FCC Rcd 23916, 23917 ¶ 6 (2003).

³⁰ *First Space Station Reform Order*, 18 FCC Rcd at 10852 ¶ 244, citing *Space Station Reform NPRM*, 17 FCC Rcd at 3875 ¶ 84.

³¹ *First Space Station Reform Order*, 18 FCC Rcd at 10852 ¶ 244, citing *Space Station Reform NPRM*, 17 FCC Rcd at 3878 ¶ 93.

applications to be substantially complete when filed is an important part of its satellite licensing procedures. In the *First Space Station Reform Order*, the Commission adopted procedures and rules establishing satellite licensees' operating rights clearly and quickly, and as a result, allowed licensees to provide service to the public much sooner than might be possible under its previous licensing procedures.³² Finding defective applications acceptable for filing is not consistent with the rules and policies adopted by the Commission in the *First Space Station Reform Order* and only serves to create uncertainty and inefficiencies in the licensing process. More importantly, the Commission explained that the policy against accepting applications that do not meet the substantially complete standard is necessary to discourage speculation,³³ and was needed to ensure that those licensees ready and willing to proceed with their satellite construction plans could do so.³⁴

10. It was never intended that any single error in the information required to be provided, no matter how minor, would be the basis for a dismissal. Thus, for example, an application which refers to a proposed band use at 5.925-6.425 MHz (instead of the intended 5925-6425 MHz or 5.925-6.425 GHz) would be recognized immediately as a typographical error. Under our substantially complete test, this type of error, standing alone, would not constitute a sufficient basis for dismissal, as would be the case with a letter perfect standard. However, the errors in EchoStar's amended application cannot be dismissed as typographical errors. For example, EchoStar failed to disclose which antenna beams are connected or switchable to each transponder and TT&C function, which is information that applicants are required to provide under Section 25.114 of the Commission's rules.

C. Completeness of EchoStar's Application

11. We disagree that EchoStar's amended application met the Commission's substantially complete standard. First, we find no merit in EchoStar's assertion that its failure to provide information to identify which antenna beams are connected or switchable to each transponder and TT&C function is a minor error and is not the kind of defect that should render an application less than substantially complete.³⁵ EchoStar contends that this information is of little importance at this stage of the satellite proposal because it will inevitably be shared with other licensees in the coordination process.³⁶ However, Section 25.114(c) of the Commission's rules clearly and explicitly requires all space station applicants to submit with their application items of information, including the identification of which antenna beams are connected or switchable to each transponder and TT&C function.³⁷ This information allows the Commission, existing operators and potential applicants to identify which frequencies and locations are impacted by the pending application, which ones are available and the extent to which the proposed frequency uses and locations require coordination. EchoStar's failure to provide this required information rendered its application substantially incomplete and therefore defective.

12. Second, we reject EchoStar's argument that the discrepancies in the requested frequency assignments in its amended application were not of such magnitude as to render its application substantially incomplete. This frequency information is required to be filed because, *inter alia*, it is one of the essential technical parameters that is used to determine whether an application is mutually-exclusive with a previously filed application. Nor is it the responsibility of the agency, as EchoStar

³² *First Space Station Reform Order*, 18 FCC Rcd at 10765-66 ¶ 4.

³³ *Id.* at 10852 ¶ 244.

³⁴ *See id.* at 10805-06 ¶ 112.

³⁵ EchoStar Reply at 8-9.

³⁶ *Id.* at 9.

³⁷ 47 C.F.R. § 25.114(c)(4)(iii).

suggests, to select for an applicant the desired frequencies from among differing frequencies provided in an application. As the Court in *Salzer* explained, "[I]t is not the agency's task to select for an applicant the type of operation that will minimize impermissible interference."³⁸ Moreover, even if EchoStar's application did not have frequency discrepancies, it would still be substantially incomplete because it did not include antenna beam and TT&C information required by Section 25.114.

13. Third, allowing EchoStar to cure its deficiencies is not in the public interest or the interest of private parties. The Commission explained in the *First Space Station Reform Order* that requiring applications to include all the information called for by the Commission's rules helps to ensure that the applicant is ready and willing to construct the satellite it proposes in its application.³⁹ Under the first-come, first-served filing-date priority procedure now in place for satellite applications such as EchoStar's, the Commission will grant the first application in the processing "queue" if the applicant is qualified and grant would not cause interference to a previously licensed satellite.⁴⁰ Allowing applicants to cure applications after they are filed could adversely impact other applicants filing complete applications that are "second-in-line" to the first application. Moreover, allowing applicants to "cure" defects, of the type noted herein, after filing could encourage applicants to file incomplete, internally inconsistent, or otherwise defective applications to receive "first-in-line" status. This is patently inconsistent with the rationale underlying the "first-come, first-served" procedure, which is designed to expedite service to *the public*.

D. Consistency with Precedent

14. We are not persuaded by EchoStar's argument that the dismissal of its amended application as incomplete is inconsistent with previous practices. Since the *First Space Station Reform Order* was adopted, the Bureau has strictly enforced its Part 25 rules, which require the Bureau to return as unacceptable any application that "is defective with respect to completeness of answers to questions, informational showings, [or] internal inconsistencies."⁴¹ Indeed, the Bureau has returned 19 applications as defective since it reaffirmed this policy in the *First Space Station Reform Order*.⁴² These actions followed the Commission's policy of dismissing applications that do not contain information that is clearly required by the Commission's rules. In those unusual instances where the Commission's satellite information requirements have not been clearly set forth in a Commission rule, Order or Public Notice, we issue Public Notices to clarify the rules, but do not dismiss applications that do not contain the relevant information if they were filed before the release of the Public Notice.⁴³ Thus, contrary to

³⁸ *Salzer*, 778 F.2d at 877.

³⁹ See *First Space Station Reform Order*, 18 FCC Rcd at 10852 ¶ 244 (requiring substantially complete is one of many necessary safeguards to help protect against speculative satellite applications).

⁴⁰ See *First Space Station Reform Order*, 18 FCC Rcd at 10792 ¶¶ 71-73.

⁴¹ 47 C.F.R. § 25.112(a)(1).

⁴² See, e.g., Letter from Thomas S. Tycz, Chief, Satellite Division, Int'l. Bur., FCC to Mr. Vicente Rubio Carreton, Hispamar Satellites, S.A. (Feb. 24, 2004); Letter from Thomas S. Tycz, Chief, Satellite Division, Int'l. Bur., FCC to Mr. Lon C. Levin, Mobile Satellite Ventures Subsidiary LLC (April 23, 2004); Letter from Thomas S. Tycz, Chief, Satellite Division, Int'l. Bur., FCC to Mr. Koichiro Matsufuji, Space Communications Corporation (April 22, 2004); Letter from Thomas S. Tycz, Chief, Satellite Division, Int'l. Bur., FCC to David K. Moskowitz, EchoStar Satellite Corp. (Dec. 8, 2003); Letter from Thomas S. Tycz, Chief, Satellite Division, Int'l. Bur., FCC to Kalpak Gude, PanAmSat Licensee Corp. (Oct. 22, 2003).

⁴³ See International Bureau Satellite Division Information: Clarification of 47 C.F.R. § 25.140(b)(2) Space Station Application Interference Analysis, *Public Notice*, 19 FCC Rcd 10652 (2004); International Bureau Clarifies Direct Broadcast Satellite Space Station Application Processing Rules, *Public Notice*, 19 FCC Rcd 1346 (2004) (*DBS*

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EchoStar's assertion, the Division has followed the Commission's policy of dismissing applications that do not comply with its rules.⁴⁴

15. Nevertheless, EchoStar cites two instances in which the Division requested missing information from applicants, rather than dismiss an application.⁴⁵ One of these was in February 2004, when the Bureau requested EchoStar to supply information relating to three EchoStar direct broadcast satellite (DBS) applications that were filed in June 2003.⁴⁶ In requesting this information, the Bureau recognized that the *First Space Station Reform Order* specifically exempted DBS from its purview.⁴⁷ Indeed, to clarify that the Bureau would hold DBS applicants to the same standard as those applicants covered by the *First Space Station Reform Order*, it issued a Public Notice⁴⁸ in January 2004 reminding DBS applicants that they are subject to Part 25's application filing requirements. Because of apparent confusion regarding Bureau policy with respect to DBS applicants, the Bureau noted in the Public Notice that DBS applications which were filed *before* the release of the Public Notice that did not meet the filing requirements would not be dismissed but would be subject to a Commission letter requesting the required information.⁴⁹ Consequently, the Bureau sent EchoStar a letter asking for additional information on three DBS applications, all of which were filed before it issued the *DBS Public Notice*.

16. EchoStar also argues that the Division's treatment of an application filed by Loral Skynet Network Services, Inc. (Loral) to modify a licensed earth station to add a foreign satellite as a new point of communication is inconsistent with the dismissal of Echostar's amended application. We disagree. Loral's application was substantially complete when filed, in that Loral provided all the information required by the Commission's rules. The staff did not provide Loral an opportunity to supply additional information that was omitted from its application, but rather asked Loral to clarify and to reformat certain

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Public Notice); International Bureau Satellite Division Information: Clarification of 47 C.F.R. § 25.140(b)(2) Interference Analysis, *Public Notice*, 18 FCC Rcd 25099 (2003).

⁴⁴ In this regard, EchoStar's reliance on *Salzer v. FCC*, 778 F.2d 869 (D.C. Cir. 1985), is inapposite. *Salzer* involved, in part, applications filed with the Commission to construct and operate a low power television station. The applications were rejected by the Commission, under the applicable "letter-perfect" standard, for not satisfying its specific acceptability criteria for such applications. 778 F.2d at 871-73. The court indicated that the Commission cannot reasonably expect applications to be letter-perfect when its instructions for those applications are ambiguous. *Id.* at 875. Since the Commission had failed to provide adequate notice as to how certain information should be filed with the agency, the *Salzer* court held that the Commission was not entitled to reject the applications on the ground that they failed to meet these informational requirements. *Id.* No such Public Notice infirmity exists in the instant case.

⁴⁵ EchoStar Reply at 5-6, *citing* Letter from Thomas S. Tycz, Chief, Satellite Division, Int'l. Bur., FCC to David K. Moskowitz, EchoStar Satellite Corp. (Feb. 12, 2004) (*February 12th EchoStar Letter*), and Letter from William Howden, Chief, Systems Analysis Branch, Satellite Division, Int'l. Bur., FCC to Mr. Stan Edinger, Manager-Government Relations, Loral Skynet Network Services, Inc. (Dec. 11, 2003) (*December 11th Loral Letter*). In any event, if the Division failed to dismiss an incomplete application, it is a well-settled principle of administrative law that the fact that an agency made an error in one instance does not require the agency to repeat the error. See *Southeast Telephone, Inc. v. FCC*, No. 99-1164, 1999 WL 1215855 (D.C. Cir. Nov. 24, 1999) (unpublished opinion) (stating that an agency need not repeat in a later case an error made in a prior case); see also Daniel R. Goodman, Receiver; Dr. Robert Chan, *Order*, 16 FCC Rcd 11153, 11154 ¶ 5 (2001); and Nathan Sherman Enterprises, Inc. et al., *Order*, 16 FCC Rcd 11150, 11151-52 ¶ 6 (2001).

⁴⁶ *February 12th EchoStar Letter*.

⁴⁷ *Id.*

⁴⁸ See *DBS Public Notice*.

⁴⁹ See *February 12th EchoStar Letter*.

information contained in the application.⁵⁰ For example, the earth station sought to communicate with a satellite that contains two payloads (C- and Ku-bands) that are licensed by two different administrations (Tonga and China). The satellite itself has three different commonly used names, *i.e.*, Tongasat C and Telstar 18 for the C-band payload and Apstar V for the Ku-band. To assist in processing the application, the letter requested that Loral clarify the relationship between the names and satellite payloads of the spacecraft, among other things.⁵¹ The Division later dismissed Loral's application because Loral failed to respond sufficiently to that information request -- not because its application was not "substantially complete" when filed.⁵² In contrast, EchoStar's application did not contain all of the information required by the Commission's rules and thus was not substantially complete when filed.

IV. CONCLUSION AND ORDERING CLAUSE

17. Therefore, we find that the Division properly dismissed EchoStar's amended application as incomplete and internally inconsistent, in accordance with Sections 25.114(c) and 25.112(a)(1) of the Commission's rules.⁵³ Thus, we affirm the Division's decision in the *EchoStar Dismissal Letter*.

⁵⁰ See Letter from William Howden, Chief, Systems Analysis Branch, Satellite Division to Stan Edinger, Manager-Government Relations, Loral Skynet Network Services, Inc. (Oct. 16, 2004) (*October 16th Loral Letter*). Where an application is substantially complete, but the reviewing staff has questions regarding the information, they may ask the applicant to provide additional information. See 47 C.F.R. § 25.111(a).


⁵¹ Additionally, the application listed all of the ninety-plus emission designators for transmissions from the earth station. Division staff therefore requested Loral to provide only the emission designators for the least interfering carrier and for the most interfering carrier. Finally, Division staff requested that Loral provide additional information to support its assertion in the application that Tonga provides effective competitive opportunities for U.S. satellite operators to provide analogous services in Tonga, and to reformat certain information contained in the application for ease of staff review.

⁵² See *December 11th Loral Letter*. The *December 11 Letter* incorrectly referred to Loral's failure to supply "missing" information required by the Commission's *DISCO II Order*. Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, Report and Order, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II*). In *DISCO II*, the Commission adopted a rule requiring U.S. earth station applicants seeking to access a foreign satellite to attach, in certain situations, an exhibit to their applications demonstrating that U.S. satellite operators have effective competitive opportunities to provide analogous services in the foreign satellite's home market (the "ECO-Sat" test). 47 C.F.R. § 25.137(a). To this end, Loral attached an exhibit to its application stating that Tonga's satellite market is open to U.S. satellite operators. Because the Commission's rules do not require the applicant to provide specific documentation to affirm market access, this exhibit was sufficient for purposes of the Commission's information rules. Nevertheless, the staff requested additional information pursuant to 47 C.F.R. § 25.111(a) because it was not clear whether Loral had adequately shown that Tonga's satellite market is open to U.S. satellite operators.

⁵³ 47 C.F.R. §§ 25.114(c), 25.112(a)(1).

18. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 301, 302, 303(r), 308, 310, and 405 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 301, 302, 303(r), 308, 309, 310, 405 and Sections 1.106 of the Commission's rules, 47 C.F.R. §§ 1.106, that the petition for reconsideration filed by EchoStar Satellite L.L.C. on March 17, 2004 IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION


Donald Abelson
Chief
International Bureau