

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

ECHOSTAR SATELLITE LLC)

Application for Authority to Construct,
Launch And Operate Geostationary Satellites
in the Fixed- Satellite Service Using the Ka
and/or Extended Ku-bands at the 83° W.L.,
105° W.L., 113° W.L., and 121° W.L. Orbital
Locations)

Policy Branch
File Nos
International Bureau
SAT-LOA-20030827-00180
SAT-LOA-20030827-00182
SAT-LOA-20030827-00185
SAT-LOA-20030827-00187

Call Signs: S2493; S2495; S2498; S2500

To: The International Bureau

REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION

EchoStar Satellite LLC (“EchoStar”) hereby files this Reply to the Opposition to Petition for Reconsideration submitted by Northrop Grumman Space Technology and Mission Systems Corporation (“Northrop Grumman”) in the above-captioned matter. As stated in the Petition, and contrary to Northrop Grumman’s assertions, the Commission should not have denied EchoStar’s above-captioned Applications because they were substantially complete as filed and in compliance with Commission Rules as reasonably understood at the time of filing. This position has become even more apparent now that the International Bureau (“Bureau”) has released a Public Notice clarifying certain filing requirements regarding interference showings and reinstated two previously dismissed satellite applications because of uncertainties regarding the interpretation of its rules.

Finally, as Northrop Grumman itself admits, to the extent EchoStar requests the alternative of dismissal of its applications without prejudice, Northrop Grumman shows no harm to it that would result from this approach, because there is none.

I. BACKGROUND

On August 27, 2003, EchoStar submitted Applications for authority to construct, launch and operate a number of geostationary orbit (“GSO”) satellites in the Fixed-Satellite Service (“FSS”) using one or more of the Ka-band frequencies (including portions of the band currently designated for GSO FSS and for non-geostationary orbit (“NGSO”) FSS) and the extended Ku-band frequencies (including the allotted and non-allotted portions of the extended Ku-band).¹ Four of these Applications, captioned above, were denied by the Bureau on April 29, 2004.² EchoStar petitioned the Bureau to reconsider its Denial Order, asserting that the Applications should be reinstated and granted because they were substantially complete, or in the alternative that the denials should be vacated in favor of dismissals without prejudice.³ Northrop

¹ EchoStar Satellite LLC, Applications for Authority to Construct, Launch and Operate Nine Geostationary Satellites in the Fixed-Satellite Service Using the Ka-and/or extended Ku-Bands at the 81°, 83°, 101°, 105°, 109°, 113°, 119°, 121°, and 123°, W.L. orbital Locations, File Nos. SAT-LOA-20030827-00180, SAT-LOA-20030827-00182, SAT-LOA-20030827-00185, and SAT-LOA-20030827-00187 (filed Aug. 27, 2003) (“Applications”).

² See In the Matter of EchoStar Satellite LLC, Applications for Authority to Construct, Launch and Operate Nine Geostationary Satellites in the Fixed-Satellite Service Using the Ka-and/or extended Ku-Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. Orbital Locations, *Memorandum Opinion and Order*, File Nos. SAT-LOA-20030827-00180, SAT-LOA-20030827-00182, SAT-LOA-20030827-00185, and SAT-LOA-20030827-00187, Call Signs S2493; S2495; S2498; S2500, DA 04-1167 (rel. Apr. 29, 2004) (“Denial Order”).

³ See In the Matter of EchoStar Satellite LLC, Applications for Authority to Construct, Launch and Operate Nine Geostationary Satellites in the Fixed-Satellite Service Using the Ka-and/or extended Ku-Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L. Orbital Locations, *Petition for Reconsideration*, File Nos. SAT-LOA-20030827-00180, SAT-LOA-20030827-00182, SAT-LOA-20030827-00185, and SAT-LOA-20030827-00187, Call Signs S2493; S2495; S2498; S2500, DA 04-1167 (filed June 1, 2004) (“Petition for Reconsideration”).

Grumman has opposed this Petition for Reconsideration only to the extent that EchoStar has requested the Applications be reinstated and granted, and has raised questions concerning the portions of the Applications to operate in the Ka-band frequencies.⁴ By this Reply, EchoStar demonstrates that Northrop Grumman's Opposition should be rejected and the Bureau should reinstate EchoStar's Applications as requested.

II. DISCUSSION

EchoStar's Applications should be reinstated because they were substantially complete as filed based upon a reasonable interpretation of the Commission's Rules. The Bureau denied the Ka-band portions of EchoStar's Applications on the grounds that EchoStar had not demonstrated that its proposed satellites will not cause interference to other proposed satellite systems in the frequency bands at issue.⁵ As EchoStar has previously explained, the specific regulatory conditions suggested by EchoStar in its Applications, especially its willingness to operate on a non-harmful interference basis, do demonstrate that the proposed satellites would not cause unacceptable levels of interference to NGSO FSS satellites that may never operate in the Ka-band.⁶

⁴ See *In the Matter of EchoStar Satellite LLC, Applications for Authority to Launch and Operate Geostationary Satellites in the Fixed-Satellite Service at 83°, 105°, 113°, and 121° West Longitude Using the Portion of the Ka-Band Allocated for Non-Geostationary Fixed-Satellite Use, Opposition to Petition for Reconsideration*, File Nos. SAT-LOA-20030827-00180, SAT-LOA-20030827-00182, SAT-LOA-20030827-00185, and SAT-LOA-20030827-00187, Call Signs S2493; S2495; S2498; S2500, DA 04-1167 (filed June 16, 2004) ("Opposition").

⁵ See Denial Order at ¶ 1.

⁶ See Petition for Reconsideration, at 6.

The Bureau's recently released Public Notice clarifying the requirements for making interference showings with satellite applications,⁷ and concurrent decisions to reinstate two satellite applications that were dismissed for failing to include certain technical information, further confirms the need to reconsider the Denial Order. In these reversals, the Bureau on its own motion recognized that the "rules at issue are subject to conflicting, but reasonable, interpretations regarding the specific information required."⁸ Accordingly, the Bureau indicated that applications submitted prior to this notice would be the subject of a request for additional information rather than outright dismissal.⁹ Similarly, EchoStar's Applications should be reinstated and granted, or at worst, made the subject of a request for additional information. As the Bureau recognizes, "[i]t is a basic premise of administrative law that the Commission must treat similarly situated parties alike, absent a legally sustainable reason to the contrary."¹⁰

Northrop Grumman argues that the Applications should be dismissed because EchoStar is not similarly situated to the other applicants cited in the Petition for Reconsideration who were "simply asked to provide the missing information," instead of having their applications

⁷ See Clarification of 47 C.F.R. § 25.140(b)(2) Space Station Application Interference Analysis, *Public Notice*, DA 04-1708, Report No. SPB-207, June 16, 2004.

⁸ See Letter to David M. Drucker, contactMEO, from Thomas S. Tycz, FCC, re contactMEO Communications, LLC, Application for Authority to Launch and Operate a Non-Geostationary Orbit Fixed-Satellite System in the Ka-band, June 16, 2004; Letter to Peter Hadinger, Northrop Grumman, from Thomas S. Tycz, FCC, re Northrop Grumman Space & Mission Systems Corporation Proposed Ka-Band/V-Band Hybrid Fixed-satellite Service Network, June 16, 2004.

⁹ *Id.* ("Applications filed prior to this Public Notice that do not meet these requirements may be subject to a Commission letter requesting that the applicant provide supplemental information on the interference analysis.").

¹⁰ See Denial Order, at ¶8, citing Petition to Deny or Dismiss of Hughes Electronics Corporation and Hughes Network Systems, Inc., filed Oct. 24, 2003, at 7 (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965)), and Northrop Grumman, Consolidated Petition to Dismiss, filed Oct. 24, 2003, at 5.

denied or dismissed.¹¹ Northrop Grumman asserts that EchoStar failed to justify a waiver of the FCC's Rules, rather than simply not meeting a standard application requirement like the other applicants. This position, however, is inconsistent with the Bureau's express reasoning for denial of the Ka-band portions of the Applications. In the Denial Order, the Bureau states that these portions of the Applications were being denied "because EchoStar has not demonstrated that its proposed satellites will not cause interference to other systems in those frequency bands . . ."¹² While the Bureau also referenced a failure to justify a waiver as an alternative basis for denying the Applications, this does not change the primary rationale for denying the Applications. It is simply an acknowledgment that a waiver request is one way to circumvent the need to include a "standard application requirement." Indeed, every failure to include "standard application requirements" could be recharacterized as a failure to justify a waiver where a waiver is positioned as an alternative.

Northrop Grumman also asserts no prejudice that would result from the alternative reconsideration request made by EchoStar – dismissal of the applications without prejudice to refile when the Commission promulgates service rules allowing broader sharing of the band.¹³ As EchoStar has explained, this approach would not create a time priority or other preferences in favor of EchoStar, and Northrop Grumman has explicitly stated its support for this approach.

¹¹ See Opposition, at 4.

¹² See Denial Order, at 1.


¹³ See Opposition, at 5.

For all of the reasons stated above and outlined in the Petition for Reconsideration, EchoStar respectfully requests that the Bureau reinstate EchoStar's Applications, or at worst, dismiss them without prejudice to refiling.

Respectfully submitted,

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Date: June 28, 2004

CERTIFICATE OF SERVICE

I, Lee C. Milstein, hereby declare that copies of the foregoing Reply to Opposition to Petition for Reconsideration were sent this 28th day of June, 2004, by hand-delivery (indicated by *) or U.S. Mail, to the following:

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