

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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JUN 16 2004

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)

Federal Communication Commission
Bureau / Office

File Nos. SAT-LOA-20030827-00180
SAT-LOA-20030827-00182
SAT-LOA-20030827-00185
SAT-LOA-20030827-00187

Call Signs: S2493; S2495; S2498; S2500

To: Chief, International Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Northrop Grumman Space Technology and Mission Systems Corporation

("Northrop Grumman"), by counsel and pursuant to Section 1.106 of the Commission's Rules (47 C.F.R. § 1.106), hereby opposes the Petition for Reconsideration filed by EchoStar Satellite LLC ("EchoStar") on June 1, 2004 with respect to the Satellite Division's April 29, 2004 denial of the above-captioned applications.¹ The Satellite Division's action was appropriate and fully in accord with the Commission's rules and processing policies.

I. BACKGROUND

On August 27, 2003, EchoStar filed a series of applications seeking new geostationary fixed-satellite service ("GSO FSS") authorizations in multiple frequency bands. Four of these applications sought authority to operate GSO spacecraft in the 18.8-19.3 GHz and 28.6-29.1 GHz bands – the portion of the Ka-band the Commission has designated for primary use by systems in the non-geostationary fixed-satellite service ("NGSO FSS").

¹ See *EchoStar Satellite LLC*, Memorandum Opinion & Order, DA 04-1167 (released April 29, 2004)("MO&O").

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On April 29, 2004, the Satellite Division issued an *MO&O* denying these applications, finding that EchoStar had incorrectly relied upon the Commission's *Space Station Licensing Reform Order* in seeking authorization for GSO spacecraft in bands designated for NGSO systems, and that it had failed to demonstrate that GSO satellites could operate on a secondary basis in the 18.8-19.3 GHz and 28.6-29.1 GHz bands. The Satellite Division also found that EchoStar had failed to justify a waiver of the pertinent spectrum allocation rules. EchoStar has sought reconsideration of the *MO&O*, requesting either that its applications be reinstated and granted, or that the denials be vacated in favor of dismissals without prejudice.²

Northrop Grumman opposes reinstatement of the EchoStar applications because the Satellite Division correctly applied its rules and processing procedures to these applications. However, it sees no reason that the Commission should not vacate denial of the EchoStar applications in favor of dismissals without prejudice to refile. In the event the applications are refiled, of course, EchoStar would need to provide a complete technical showing demonstrating that its GSO satellites could operate on a secondary basis to NGSO systems in the 18.8-19.3 GHz and 28.6-29.1 GHz bands.

II. DISCUSSION

A. **The Satellite Division's Findings Concerning EchoStar's Applications Were Correct, and There Is Therefore No Basis For Reinstatement of The Applications.**

In rejecting EchoStar's GSO applications, the Satellite Division found that "EchoStar has not demonstrated that it can operate on a non-interference basis to NGSO FSS systems in the band." *MO&O* at 6 (¶ 16). The Satellite Division appropriately determined that EchoStar's assertion that it would "immediately cease" operations upon notification of harmful

² See EchoStar Petition for Reconsideration, File Nos. SAT-LOA-20030827-00180, 00182, 00185 & 00187 (filed June 1, 2004) ("EchoStar Petition").

interference” being caused to NGSO operators was inconsistent with Commission precedent. *Id.* Instead, the Satellite Division correctly held that an affirmative technical showing of capability to operate on a non-harmful-interference basis is necessary to support secondary operation.

EchoStar maintains in its *Petition for Reconsideration* that “this rationale is unsustainable,” but offers no new arguments in support. *EchoStar Petition* at 6. Instead, it simply reiterates the same unpersuasive arguments that the Satellite Division has already properly rejected. First, EchoStar argues that the Commission should accept the use of Equivalent Power Flux Density (EPFD) limits in the 18.8-19.3 GHz and 28.6-29.1 GHz NGSO bands that apply for protection of GSO systems in adjacent portions of the Ka-band. *Id.* This notion, however, is fundamentally inconsistent with the secondary operational status that EchoStar has claimed that it is seeking, in that the specified limits are designed to protect GSO networks from NGSO systems. *See Northrop Grumman Consolidated Petition to Dismiss* at 2 & 8 n.26.

Second, EchoStar also continues to argue “there was no need to submit a detailed technical interference analysis” because it specifically agreed to “immediately cease operations upon notification of a concrete risk of harmful interference.” *EchoStar Petition* at 7. Particularly where the Commission and private industry have spent years establishing ground rules for spectrum use to facilitate the development of new technologies, mere commitments to suspend operations if these rules are violated are insufficient to support waiver of the rules. In all of the cases that EchoStar cites where rule waivers were granted and approval was conditioned on the requirement to cease operations in the event of harmful interference, the applicants in question had demonstrated, sometimes through exhaustive showings, the technical feasibility of their

proposed secondary operations.³ Indeed, as EchoStar itself notes, such uses may be granted only “when there is little potential for interference into any [authorized] service” and “when the non-conforming operator accepts any interference from authorized services.” EchoStar Petition at 8.⁴ Contrary to its assertions, EchoStar has met neither of these criteria. It has failed to demonstrate through a technical showing that its proposed GSO use would not interfere with NGSO systems, and its attempt to take advantage of EPFD limits that were developed to protect GSO satellites from NGSO systems belies any intent to accept interference from NGSO systems.

Finally, EchoStar is incorrect in asserting that the Commission should have simply requested additional interference analyses, rather than denying or dismissing the applications. See EchoStar Petition at 9-10. EchoStar premises this claim on the fact that “similarly-situated” applicants that failed to provide the standard two-degree spacing interference analysis were simply asked to provide the missing information. EchoStar, however, is not similarly situated with these applicants. Its failure was not a failure to meet a standard application requirement, but a failure to justify a waiver of the FCC’s Rules. The defect was not procedural, but substantive.

³ Indeed, in all three of these cases, parties offering services that were primary in the bands affected acquiesced in some fashion to the non-conforming use approved. See *The Boeing Company*, 16 FCC Rcd 22645, 22652 (¶ 16) (2001)(granting waiver “based on the analyses of potential interference ... and on the fact that all of the parties to this proceeding reached a consensus on the appropriate measures for AMSS systems to protect primary FSS operations”); *The Boeing Company*, 16 FCC Rcd 5864 (2001)(operators within six degrees of the satellite to be accessed by non-conforming transmitters indicated “no objection to the EIRP density levels proposed ...”); *QUALCOMM, Inc.*, 4 FCC Rcd 1543 (1989)(imposing operational conditions on waiver grant even though “no operators in the fixed-satellite service ... object to Qualcomm’s proposal.”). It should also not go unobserved that all three of these cases involve approval of non-conforming *earth station* uses, permitting operation of mobile terminals in FSS bands.

⁴ EchoStar cites *The Boeing Company*, 16 FCC Rcd 22645, 22651 (¶ 12) & n.48 (2001), which relies upon *Fugro-Chance, Inc.*, 10 FCC Rcd 2860, 2860 (¶ 2) (IB 1995) and other cases.

B. In the Event That Its Applications Are Dismissed Without Prejudice, EchoStar Will Need To Remedy The Substantive Deficiencies in its Prior Showing.

EchoStar argues in the alternative that, if its applications are not reinstated, they should be dismissed without prejudice to refiling, rather than denied. *See* EchoStar Petition at 12-16. Northrop does not object to such treatment.⁵ Indeed, Northrop Grumman supports appropriate GSO operations in the 18.8-19.3 GHz and 28.6-29.1 GHz bands, provided that these operations protect NGSO systems. If the Commission grants the relief of dismissing the applications rather than denying them, EchoStar would need to submit a full technical demonstration of the ability of its GSO spacecraft to operate without causing harmful interference to planned NGSO systems, a showing which it has not heretofore attempted.

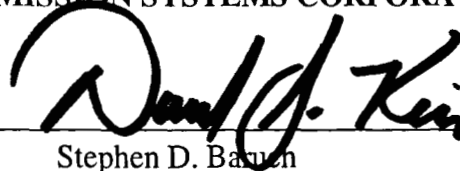
III. CONCLUSION

For all of the foregoing reasons, the Bureau should deny EchoStar's Petition for Reconsideration insofar as it seeks reinstatement and processing of the defective Ka-band GSO applications that the Satellite Division properly rejected in its April 29, 2004 *MO&O*.

Respectfully submitted,

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⁵ Indeed, Northrop Grumman's original pleading in this proceeding sought only the dismissal without prejudice of the subject applications.

CERTIFICATE OF SERVICE

I, Sharon Krantzman, hereby certify that a true and correct copy of the foregoing Consolidated Reply to Opposition was sent by first-class, postage prepaid mail this 16th day of June, 2004, to the following:

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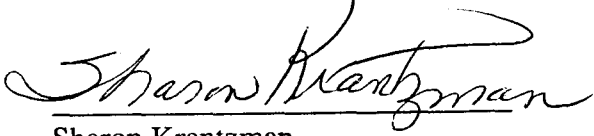
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