

DUPLICATE

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

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APR 26 2004

In the Matter of )  
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EchoStar Satellite LLC )  
 )  
Application for Authority to Launch and Operate a )  
GSO Satellite at 101°W Using the Planned Ku-band )  
 )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

File No. SAT-LOA-20040210-00015

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Policy Branch  
International Bureau

**COMMENTS OF MOBILE SATELLITE VENTURES SUBSIDIARY LLC**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files these Comments on the above-captioned application of EchoStar Satellite LLC (“EchoStar”) requesting authority to construct, launch, and operate a geostationary (“GSO”) satellite at 101°W using 300 MHz of Planned Ku-band frequencies.<sup>1</sup> The Bureau must defer action on EchoStar’s application with respect to the 250 MHz for which it is second-in-line behind MSV. The Bureau should also defer action on EchoStar’s application with respect to the remaining 50 MHz for which MSV will be first-in-line if the Bureau reconsiders its recent decision dismissing MSV’s prior-filed application for these same frequencies. Finally, after MSV’s application is granted, if MSV and EchoStar are able to reach a sharing agreement, then it may be possible to grant EchoStar’s application, subject to any relevant conditions on EchoStar’s license.

**Background**

MSV is the successor to Motient Services Inc. (“Motient,” formerly known as AMSC Subsidiary Corporation), the entity authorized by the Commission in 1989 to construct, launch,

<sup>1</sup> Application of EchoStar Satellite LLC, File No. SAT-LOA-20040210-00015 (February 10, 2004) (“*EchoStar Application*”).

and operate a United States Mobile Satellite Service (“MSS”) system in the L-band.<sup>2</sup> MSV’s current satellite was launched in 1995 and operates at 101°W.

In July 1998, MSV filed an application to launch and operate a higher power, replacement satellite with substantially greater capacity.<sup>3</sup> To accommodate this greater capacity, the application, as amended in December 2000, requested authority to use an additional 250 MHz of Planned Ku-band spectrum<sup>4</sup> beyond the 200 MHz for which MSV is already licensed.<sup>5</sup> Specifically, MSV’s replacement application requested the following 450 MHz of Planned Ku-band spectrum at 101°W: 10.75-10.95 & 11.2-11.45 GHz (downlink) and 12.75-13.15 & 13.20-13.25 GHz (uplink). The only segment of the Planned Ku-band for which MSV is not currently licensed and did not apply in December 2000 was the following 50 MHz: 10.70-10.75 GHz (downlink) and 13.5-13.20 GHz (uplink). The Bureau placed MSV’s amended application on *Public Notice* in March 2001. *See Public Notice*, Report No. SAT-00066 (March 19, 2001). No party filed a competing application or objected to MSV’s request to operate its replacement satellite using additional Planned Ku-band spectrum for feeder links. MSV filed a minor

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<sup>2</sup>*Memorandum Opinion, Order and Authorization*, 4 FCC Rcd 6041 (1989) (“*MSV Licensing Order*”); *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); *Final Decision on Remand*, 7 FCC Rcd 266 (1992); *aff’d*, *Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993); *see also AMSC Subsidiary Corporation, Memorandum Opinion and Order*, 8 FCC Rcd 4040 (1993) (“*MSV License Modification Order*”).

<sup>3</sup>*See Application of AMSC Subsidiary Corporation*, File No. SAT-LOA-19980702-00066 (July 2, 1998) (“*July 1998 Application*”).

<sup>4</sup>Throughout these Comments, references to the amount of spectrum are based on its use in both the uplink and downlink direction. Thus, in this case, for example, there are 250 MHz in each direction.

<sup>5</sup>*See Application of Motient Services Inc.*, SAT-AMD-20001214-00171 (December 14, 2000), at FCC Form 312, Question 43 (“*MSV December 2000 Amendment*”). In March 2001, MSV filed a second amendment in which it requested to operate terrestrial base stations, but did not request additional frequencies beyond those for which it had already applied. *See Application of MSV*, File No. SAT-ASG-20010302-00017 *et al.* (March 2, 2001).

amendment to this application on November 18, 2003 to revise the technical parameters of its proposed satellite, but did not request additional frequencies beyond those for which it had already applied.<sup>6</sup>

On August 27, 2003, EchoStar filed an application for authority to launch and operate a satellite at 101°W using the 250 MHz that MSV had requested in its replacement application and the remaining 50 MHz in the Planned Ku band (*i.e.*, 10.70-10.75 GHz and 13.15-13.20 GHz).<sup>7</sup> Under the new first-come, first-served licensing policies for GSO satellites, EchoStar was second-in-line behind MSV at 101°W with respect to 250 MHz of the 300 MHz it requested and first-in-line with respect to the 50 MHz for which MSV is not licensed and did not apply in December 2000.<sup>8</sup> On November 26, 2003, EchoStar amended its application.<sup>9</sup> On February 9, 2004, the Bureau dismissed EchoStar's application as incomplete and otherwise not in compliance with the Commission's rules.<sup>10</sup>

On February 9, 2004, upon dismissal of EchoStar's application, MSV filed an amendment to its pending application for a replacement satellite to request the remaining 50

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<sup>6</sup> See MSV, Minor Amendment, File No. SAT-AMD-20031118-00335 (November 18, 2003).

<sup>7</sup> Application of EchoStar Satellite Corporation, File No. SAT-LOA-20030827-00179 (filed August 27, 2003).

<sup>8</sup> On November 17, 2003, MSV filed a Petition to Deny this application, noting that (i) EchoStar's application was mutually exclusive with MSV's prior-filed, first-in-line application for a replacement satellite with respect to all but 50 MHz of the 300 MHz EchoStar had requested; (ii) the application proposed a GSO satellite for domestic service without requesting a waiver of footnote NG104 that limits use of the Planned Ku-band by GSO satellites to "international systems;" and (iii) the unlimited deployment of earth stations that EchoStar proposed violated the Commission's policy of limiting the number of earth stations operating in the Planned Ku-band. See Mobile Satellite Ventures Subsidiary LLC, Petition to Deny, File No. SAT-LOA-20030827-00179 (filed November 17, 2003).

<sup>9</sup> EchoStar Satellite Corporation, Amendment, File No. SAT-AMD-20031126-00343 (November 26, 2003).

<sup>10</sup> See Letter from Thomas S. Tycz, FCC, to David K. Moskowitz, EchoStar, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (February 9, 2004).

MHz of Planned Ku-band frequencies it had not previously requested (10.70-10.75 GHz and 13.15-13.20 GHz).<sup>11</sup>

On February 10, 2004, one day after MSV filed its amendment, EchoStar filed the above-captioned application for the following 300 MHz of Planned Ku-band frequencies at 101°W: 10.70-10.75 GHz and 11.2-11.45 GHz (downlink) and 12.75-13.0 GHz & 13.15-13.2 GHz (uplink). *See EchoStar Application*. In its application, EchoStar concedes that MSV is first-in-line for some of these frequencies. *See id.*, Technical Annex at 25. At the same time, EchoStar states its view that MSV and EchoStar can share these frequencies at 101°W over the same geographic area. *See id.*, Technical Annex at 25-26. EchoStar contemplates entering into an agreement with MSV that would detail the conditions for sharing. *See id.*, Technical Annex at 1, 7, 12 n.3, 22, 25, 26. On March 26, 2004, the Bureau placed EchoStar's application on *Public Notice*. *See Report No. SAT-00203 (March 26, 2004)*.

On April 23, 2004, the Bureau dismissed MSV's February 9, 2004 amendment for purportedly failing to include an interference analysis.<sup>12</sup> The deadline for challenges of this decision has not yet passed. The Bureau requested MSV to supplement, but did not dismiss, its

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<sup>11</sup> Mobile Satellite Ventures Subsidiary LLC, Amendment, File No. SAT-AMD-20090209-00014 (filed February 9, 2004). On March 10, 2004, EchoStar filed a Petition for Reconsideration of the Bureau's February 9, 2004 decision to dismiss EchoStar's November 26, 2003 amendment. *See EchoStar Satellite LLC, Petition for Reconsideration, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (March 10, 2004)*. EchoStar asked the Bureau to reinstate its application *nunc pro tunc*. *Id.* In its Reply to MSV's Opposition to its Petition for Reconsideration, EchoStar accepts that if its application is reinstated *nunc pro tunc*, it will not assume first-in-line status for the 250 MHz of Planned Ku-band frequencies for which MSV originally filed in December 2000 (11.2-11.45 GHz band (downlink) and 12.75-13.00 GHz band (uplink)). *See EchoStar, Reply, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (April 5, 2004)*, at 9. EchoStar's Petition for Reconsideration is pending.

<sup>12</sup> *See Letter from Thomas S. Tycz, FCC, to Lon C. Levin, MSV, File No. SAT-AMD-20040209-00015, DA 04-1095 (April 23, 2004)*.

November 18, 2003 amendment.<sup>13</sup> Thus, as of this date, MSV is either licensed or first-in-line for the following 450 MHz of Planned Ku-band frequencies: 10.75-10.95 & 11.2-11.45 GHz (downlink) and 12.75-13.15 & 13.20-13.25 GHz (uplink). If the Bureau reconsiders its April 23 decision, MSV also will be first-in-line for the remaining 50 MHz of Planned Ku-band frequencies: 10.70-10.75 GHz (downlink) and 13.15-13.20 GHz (uplink).

### **Discussion**

#### **I. The Bureau Must Defer Action on EchoStar's Application with Respect to the 250 MHz for Which It Is Second-in-Line Behind MSV**

EchoStar's application is mutually exclusive with MSV's prior-filed replacement application with respect to the following 250 MHz of Planned Ku-band frequencies at 101°W: 11.2-11.45 GHz (downlink) and 12.75-13.00 GHz (uplink). Under the Commission's new first-come, first-served policies which apply to feeder links for GSO MSS satellites, MSV's application is first-in-line with respect to these Planned Ku-band frequencies at 101°W. 47 C.F.R. § 25.158(a), (b). Moreover, in response to the March 2001 *Public Notice* accepting MSV's replacement application for filing, neither EchoStar nor any other party either filed a competing application or objected to MSV's use of additional Planned Ku-band frequencies for feeder links. The Bureau must defer action of EchoStar's second-in-line application with respect to these 250 MHz until after MSV's application is processed and granted.

#### **II. The Bureau Should Defer Action on EchoStar's Application with Respect to the Remaining 50 MHz for Which MSV Will Be First-in-Line if the Commission Grants MSV's Request that the Bureau Reconsider the Dismissal of MSV's Prior-Filed Application for the Same Frequencies**

MSV believes that the Bureau's April 23, 2004 decision dismissing MSV's February 9, 2004 amendment for the remaining 50 MHz of Planned Ku-band spectrum was in error and will

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<sup>13</sup> See Letter from Robert G. Nelson, FCC, to Lon C. Levin, MSV, File No. SAT-AMD-20031118-00335 (April 23, 2004).

eventually be reversed. When MSV's amendment is reinstated, MSV will return to first-in-line status for these frequencies. Accordingly, the Bureau should defer action on EchoStar's application for these 50 MHz until after the Commission acts on MSV's challenge to the dismissal of its February 9, 2004 amendment. Should the Bureau nonetheless act on EchoStar's application prior to acting on MSV's challenge, then the Bureau must make clear that any grant of EchoStar's application is subject to modification upon action on MSV's challenge.

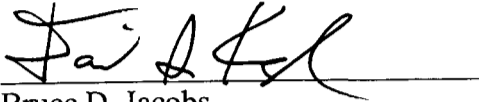
**III. The Bureau Cannot Grant EchoStar's Application Unless and Until MSV and EchoStar Conclude a Sharing Agreement**

EchoStar concedes that its proposal to use Planned Ku-band frequencies at 101°W is dependent upon its conclusion of an agreement with MSV detailing the conditions for sharing. *See id.*, Technical Annex at 1, 7, 12 n.3, 22, 25, 26. MSV agrees with EchoStar that sharing may be possible and is prepared to work with EchoStar to attempt to reach an agreement on sharing. MSV urges the Bureau to refrain from granting this application, however, unless and until MSV and EchoStar conclude such an agreement. Assuming MSV and EchoStar can reach an agreement on sharing, then the Bureau must condition any license issued to EchoStar on its compliance with this agreement.

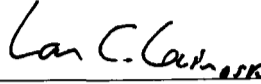
**Conclusion**

MSV requests that the Commission act consistently with the views expressed herein.

Respectfully submitted,



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Dated: April 26, 2004

**CERTIFICATE OF SERVICE**

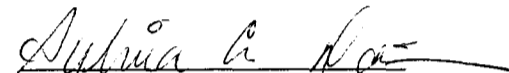
I, Sylvia A. Davis, a secretary with the law firm of Shaw Pittman LLP, hereby certify that on this 26th day of April 2004, served a true copy of the foregoing "Comments" by first class United States mail, postage prepaid, upon the following:

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