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FEDERAL COMMUNICATIONS COMMISSION  
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Policy Branch  
International Bureau

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

**Re: Written Ex Parte Submission**  
**File No. SAT-AMD-20040209-00014 – Mobile Satellite Ventures Subsidiary LLC – “First-in-Line” Application for Planned Ku-band Frequencies at 101°W;**  
**File No. SAT-LOA-20040210-00015 - EchoStar Satellite LLC - “Second-in-Line” Application for Planned Ku-band Frequencies at 101°W**

Dear Ms. Dortch:

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby requests that the International Bureau (“Bureau”) clarify that its decision to place on *Public Notice* the application of EchoStar Satellite LLC (“EchoStar”) for Planned Ku-band frequencies at 101°W does not prejudice MSV’s rights as a prior filed, first-in-line applicant for the same frequencies at the same orbital location. Because the two applications are mutually exclusive, MSV is submitting this request on the record as an *ex parte* filing.

On February 9, 2004, MSV filed an amendment to its pending application for a replacement geostationary (“GSO”) Mobile Satellite Service (“MSS”) satellite at 101°W to request an additional 50 MHz of Planned Ku-band feeder link frequencies in each direction that it had not previously requested.<sup>1</sup> MSV’s application, as amended, now requests all 500 MHz of

<sup>1</sup> Mobile Satellite Ventures Subsidiary LLC, Amendment, File No. SAT-AMD-20090209-00014 (filed February 9, 2004). MSV filed its original application for a replacement satellite in July 1998. See AMSC Subsidiary Corporation, Application, File No. SAT-LOA-19980702-00066 (July 2, 1998). To accommodate the greater capacity of its higher-power, replacement satellite, the application, as amended in December 2000, requested authority to use an additional 250 MHz of Planned Ku-band spectrum in each direction for feeder links beyond the 200 MHz in each direction for which MSV is already licensed. See Motient Services Inc., Application, SAT-AMD-20001214-00171 (December 14, 2000). Specifically, as amended in December 2000, MSV’s replacement application requested the following 450 MHz of Planned Ku-band feeder link spectrum in both directions 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 Bureau placed MSV’s amended application on *Public Notice* in March 2001. See *Public Notice*, Report No. SAT-00066 (March 19, 2001). No

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Planned Ku-band frequencies: 10.70-10.95 & 11.2-11.45 GHz (downlink) and 12.75-13.25 GHz (uplink).<sup>2</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).<sup>3</sup> Thus, EchoStar's application is mutually exclusive with MSV's prior filed application as amended.<sup>4</sup>

On March 26, 2004, the Bureau placed EchoStar's application on *Public Notice*. See Report No. SAT-00203 (March 26, 2004). Comments on EchoStar's application are due on April 26, 2004. MSV's first-in-line application as amended on February 9<sup>th</sup>, however, has not yet been placed on *Public Notice*.

The Commission has explained that under first-come, first-served processing, it will consider applications for each GSO orbital location one at a time in the order they are filed.<sup>5</sup> The Commission may consider subsequently filed applications, but "only if they are not mutually

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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.

<sup>2</sup> Feeder links for GSO MSS satellites are considered "GSO-like" and are therefore considered on a first-come, first-served basis. 47 C.F.R. § 25.158(a).

<sup>3</sup> EchoStar Satellite LLC, Application, File No. SAT-LOA-20040210-00015 (filed February 10, 2004). EchoStar filed a similar application on August 27, 2003 which it later amended on November 26, 2003. See EchoStar, Application, File No. SAT-LOA-20030827-00179 (filed August 27, 2003); EchoStar, Amendment, File No. SAT-AMD-20031126-00343 (November 26, 2003). On February 9, 2004, the Bureau dismissed this application as amended because it was incomplete and otherwise not in compliance with the Commission's rules. 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). EchoStar has filed a Petition for Reconsideration of this decision asking the Bureau to reinstate its application *nunc pro tunc*. See EchoStar Satellite LLC, Petition for Reconsideration, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (March 10, 2004). 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 in each direction 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.

<sup>4</sup> MSV and EchoStar have begun discussions concerning the potential for sharing of these frequencies, but those discussions are incomplete.

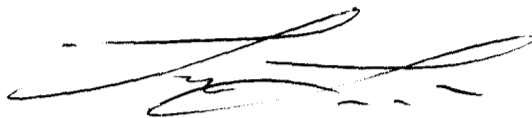
<sup>5</sup> *Amendment of the Commission's Space Station Licensing Rules and Policies, First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, FCC 03-102 (rel. May 19, 2003), at ¶¶ 108-110 ("SSLR Order").

Ms. Marlene H. Dortch  
April 14, 2004  
Page 3

exclusive with a previously-filed application.” *SSLR Order* ¶ 110. In this case, EchoStar’s February 10<sup>th</sup> application is mutually exclusive with MSV’s February 9<sup>th</sup> application, yet the Bureau has placed EchoStar’s second-in-line application on *Public Notice* prior to MSV’s first-in-line application.

MSV asks the Bureau to clarify that its decision to place EchoStar’s second-in-line application on *Public Notice* does not in any way prejudice MSV’s rights as a prior filed, first-in-line applicant for the same frequencies at the same orbital location.

Respectfully submitted,



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