

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )  
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EchoStar Satellite L.L.C. )  
 )  
Application for Authority to Launch and Operate )  
a Geostationary Satellite at the 101° W.L. Orbital )  
Location Using the Allotted Ku-band )  
\_\_\_\_\_ )

File No.  
SAT-LOA-20040210-00015

Call Sign S2615  
MAY 20 2004

Received  
Policy Branch  
International Bureau

To: The International Bureau

**REPLY COMMENTS OF ECHOSTAR SATELLITE LLC**

EchoStar Satellite LLC (“EchoStar”), formerly known as EchoStar Satellite Corporation, hereby files this Reply to the Comments submitted by Mobile Satellite Ventures Subsidiary LLC (“MSV”) in the above-captioned matter.<sup>1</sup>

**I. BACKGROUND**

As discussed below, MSV and EchoStar have filed applications to obtain authorization to construct, launch and operate geostationary satellites at 101°W.L. using overlapping frequencies.<sup>2</sup> However, as recognized by each party in this matter, because it should be possible for MSV and EchoStar to operate at this location using the same frequencies, the applications are *not* mutually exclusive even for those frequencies that do overlap. Thus, there is

<sup>1</sup> See Comments of Mobile Satellite Ventures Subsidiary LLC, File No. SAT-LOA-20040210-00015; Call Sign S2615 (Apr. 26, 2004) (“MSV Comments”).

<sup>2</sup> See Application of EchoStar Satellite LLC, File No. SAT-LOA-20040210-00015 (Feb. 10, 2004); Application of AMSC Subsidiary Corporation, File No. SAT-LOA-19980702-00066 (Jul. 2, 1998).

no need for the Bureau to defer action on EchoStar's application as suggested by MSV and doing so would be inconsistent with established Commission policy. And certainly the sharing issues are irrelevant to the 50 MHz of spectrum for which MSV does not have a pending application on file. Nor should the Bureau defer action on EchoStar's application pending reconsideration of its dismissal of MSV's recent application.<sup>3</sup> That dismissal is fully effective, and has not been stayed by the Commission. Finally, the Bureau should have dismissed the MSV application in its entirety -- all the more reason why it should not defer action on EchoStar's application.

**II. THERE IS NO NEED FOR THE BUREAU TO DEFER RULING ON ECHOSTAR'S APPLICATION BECAUSE THE ECHOSTAR AND MSV APPLICATIONS ARE NOT MUTUALLY EXCLUSIVE**

In its Comments, MSV urges the Bureau to defer action on EchoStar's application. There is no need to defer granting EchoStar's application because such a ruling would not preclude later approval of MSV's application. The Commission's Rules provide that applications will be considered mutually exclusive only "if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more other applications."<sup>4</sup> The applications filed by EchoStar and MSV are not mutually exclusive because co-frequency sharing of the requested Ku-band frequencies is technically feasible -- that is, the grant of one application need not preclude the grant of the other. As explained in EchoStar's application, MSV's proposed use of the requested Ku-band frequencies for feeder links to and from a very limited number of large earth stations in a few geographic locations should make it possible to coordinate EchoStar's co-frequency operations with those of MSV at the same orbital location. In fact, as has already been

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<sup>3</sup> See Letter to Lon C. Levin, Vice President, MSV, from Thomas S. Tycz, Chief, Satellite Division, International Bureau, DA 04-1095 (Apr. 23, 2004).

<sup>4</sup> 47 C.F.R. § 25.155(a) (2003).

reported to the Commission, MSV and EchoStar have begun discussions concerning the potential for sharing this spectrum,<sup>5</sup> and have entered into a confidentiality agreement. In order to facilitate sharing and frequency coordination, EchoStar has proposed in its application and earlier amendment incorporation of spot-beams into its satellite design.<sup>6</sup> Both EchoStar and MSV have also stated that it should be possible to reach agreement on any necessary coordination.<sup>7</sup> And certainly there is no reason to wait regarding the 50 MHz of spectrum for which EchoStar alone has a pending filing. In that respect, it would be inappropriate for the Bureau to hold this application in abeyance pending a reconsideration of its dismissal of MSV's recent application. That dismissal is fully effective and the First-Come, First-Served system could be stalled if reconsideration petitions were used in an effort to create priority claims.

### **III. DEFERRING A RULING ON ECHOSTAR'S APPLICATION WOULD BE INCONSISTENT WITH ESTABLISHED COMMISSION POLICY**

Deferring a ruling on EchoStar's application would run counter to the Commission's policy of assigning effective uses of the spectrum in a timely fashion. The Commission's first-come, first-served order eliminated processing rounds for new satellite applications in the Fixed Satellite Service in favor of a more rapid process for allocating

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<sup>5</sup> See Letter to Marlene H. Dortch, Secretary, FCC, from Pantelis Michalopoulos, Steptoe & Johnson LLP, File Nos. SAT-LOA-20040210-00015, SAT-AMD-20040209-00014, at 2 (filed Apr. 26, 2004); see also Letter to Marlene H. Dortch, Secretary, FCC, from Lon C. Levin, Vice President, MSV, File Nos. SAT-AMD-20040209-00014, SAT-LOA-20040210-00015 (Apr. 14, 2004) at 2, n.4; MSV Opposition to Petition for Reconsideration at 9, n.14, File Nos. SAT-LOA-20030827-00179; SAT-AMD-20031126-00343, Call Sign S2492 (Mar. 24, 2004).

<sup>6</sup> See EchoStar Satellite L.L.C., Application, File No. SAT-LOA-20040210-00015 (Feb. 10, 2004) ("EchoStar Application"), Attachment A, at 7-10.

<sup>7</sup> See e.g., Application of EchoStar Satellite LLC, File No. SAT-LOA-20040210-00015, at 3 (Feb. 10, 2004); MSV Comments at 6.

spectrum.<sup>8</sup> Proceeding with EchoStar's application will "reduce the amount of time the spectrum lies fallow" consistent with stated FCC policies.<sup>9</sup> Moreover, as discussed below, the potential amount of time during which the spectrum could lie fallow were the Bureau to defer acting on EchoStar's application is exacerbated by the question of when MSV would be able to make use of the spectrum for which it has applied.

First, the status of MSV's underlying application is not entirely clear. While the Bureau saw fit to dismiss MSV's most recent amendment, while requesting more information regarding the underlying application as amended,<sup>10</sup> this was not the approach taken by the Bureau recently with respect to an amendment previously filed by EchoStar with respect to this very slot -- 101°W.L.<sup>11</sup> In that case, the Commission had dismissed both EchoStar's amendment and the application being amended. Under the standard applied in dismissing EchoStar's application, MSV's underlying application should have been dismissed as well. In addition, because MSV's amendment was clearly "major" as defined in Section 25.116(b)(1) of the Commission's Rules, 47 C.F.R. § 25.116(b)(1),<sup>12</sup> its earlier application should have been

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<sup>8</sup> See *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies, Mitigation of Orbital Debris*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, FCC 03-102, at ¶ 74 (rel. May 19, 2003) ("*FCFS Order*").

<sup>9</sup> *Id.*

<sup>10</sup> See Letter from Thomas S. Tycz, FCC, to Lon C. Levin, MSV, File No. SAT-AMD-20040209-00014, DA 04-1095 (Apr. 23, 2004); Letter from Robert G. Nelson, FCC, to Lon C. Levin, MSV, File No. SAT-AMD-20031118-00335 (Apr. 23, 2004).

<sup>11</sup> See Letter to David K. Moskowitz, EchoStar, from Thomas S. Tycz, FCC, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343, DA 04-323 (Feb. 9, 2004).

<sup>12</sup> 47 C.F.R. 25.116(b)(1) ("An amendment will be deemed to be a major amendment ... [i]f the amendment ... changes the proposed frequencies or orbital locations to be used.").

converted into a newly filed application with the resulting loss of date priority.<sup>13</sup> Thus, MSV's newly filed application, as amended, would be subject to the rules in place at the time of its amendment, which require, among other things, an interference analysis.<sup>14</sup> Since any such analysis is absent from MSV's application, the status of MSV's application is questionable.<sup>15</sup>

Second, MSV applied to launch this spacecraft in July 1998.<sup>16</sup> MSV has kept the application alive for almost a full six years, modifying or amending it no fewer than eight times, and to EchoStar's knowledge, has yet to complete construction of a replacement satellite at this orbital location. MSV has also requested a waiver of the Commission's bond posting requirement with respect to its request to use the 101° W.L. slot, which casts further doubt on its ability and commitment to build the requested satellite.<sup>17</sup> MSV's delay in finalizing plans for this satellite in combination with its apparent reluctance to post a bond places its priority claims into question. By contrast, EchoStar could make efficient use of the spectrum in an expeditious manner. This would promote the Commission's stated objectives that include expediting the provision of services to the public, and facilitating business decisions based on market forces

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<sup>13</sup> 47 C.F.R. 25.116(d) ("Any application for a GSO-like satellite license within the meaning of § 25.158 will be considered to be a newly filed application if it is amended by a major amendment (as defined by paragraph (b) of this section), and will cause the application to lose its status relative to later-filed applications in the "queue" as described in § 25.118.").

<sup>14</sup> 47 C.F.R. 25.114(d)(4).

<sup>15</sup> See e.g., Letter from Thomas S. Tycz, FCC, to Kalpak Gude, PanAmSat, File Nos. SAT-LOA-19951012-00165, SAT-AMD-19960202-00016, and SAT-AMD-20030827-00284, DA 03-3313 (Oct. 22, 2003) (dismissing underlying application because it was subsumed by further amendment).

<sup>16</sup> See Application of AMSC Subsidiary Corporation, File No. SAT-LOA-19980702-00066 (Jul. 2, 1998).

<sup>17</sup> See Letter from Lon C. Levin, MSV, to Marlene Dortch, Secretary, FCC, File No. SAT-ASG-20010302-00017 *et al.* (dated Nov. 4, 2003).

rather than regulatory procedural hold-ups.<sup>18</sup> Moreover, as previously indicated, when and if MSV ultimately receives an authorization, the parties should be able to coordinate the available spectrum efficiently.

#### IV. CONCLUSION

For all of the above reasons as well as those set forth in its application, EchoStar respectfully requests that the Commission grant EchoStar's pending application and not defer its decision pending a ruling on MSV's petition for reconsideration as requested by MSV.

Respectfully submitted,



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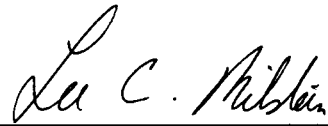
<sup>18</sup> See *FCFS Order* at ¶ 7.

**CERTIFICATE OF SERVICE**

I, Lee C. Milstein, hereby declare that copies of the foregoing Reply to Comments of Mobile Satellite Ventures Subsidiary LLC were sent this 11th day of May 2004, by hand-delivery or U.S. Mail (indicated by \*), to the following:

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