

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Pantelis Michalopoulos
Philip L. Malet
202.429.3000
pmichalo@steptoe.com
pmalet@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Received

JUN 28 2005

Policy Branch
International Bureau

Tel 202.429.3000
Fax 202.429.3902
steptoe.com

June 23, 2005

BY HAND DELIVERY

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

RECEIVED

JUN 23 2005

Federal Communications Commission
Office of Secretary

**Re: EchoStar Satellite L.L.C.
File No. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343, Call Sign S2492
File No. SAT-LOA-20040210-00015, Call Sign S2615**

Dear Ms. Dortch:

On behalf of EchoStar Satellite L.L.C. ("EchoStar"), this letter is being filed in response to the June 15, 2005 letter from Jennifer A. Manner, Vice President of Regulatory Affairs for Mobile Satellite Ventures LLC ("MSV") to Donald Abelson, Chief of the International Bureau ("MSV Letter"). The MSV Letter requests dismissal of EchoStar's pending application (filed on February 10, 2004) to launch and operate an FSS satellite at the 101° W.L. orbit location using the 10.70-10.95/11.2-11.45 GHz and the 12.75-13.25 GHz frequency bands ("EchoStar Pending Application"). EchoStar strongly opposes MSV's request. If the Bureau were to accede to MSV's request, it would be making MSV's license for 101° W.L. de facto exclusive nationwide, even though that license is limited to only two geographic sites in the U.S.

MSV argues that the EchoStar Pending Application now conflicts with MSV's use of the extended Ku-band frequencies for MSS feeder links.¹ MSV's request and arguments should be rejected for at least two reasons. **First**, MSV ignores the fact that the authorization set forth in the *MSV Order*²

¹ See MSV Letter at 1-2.

² *Mobile Satellite Ventures Subsidiary LLC, Order and Authorization*, DA 05-1492 (May 23, 2005) ("*MSV Order*").

is subject to two pending Applications for Review, and a recently filed Petition for Clarification and/or Reconsideration.³ It is therefore premature for the Bureau to draw any conclusions as to whether the EchoStar Pending Application somehow conflicts or is mutually exclusive with the recently granted MSV Application.⁴

Second, the EchoStar Pending Application does not conflict with the recently granted MSV Application. MSV argues that the Commission's policies require it to dismiss a pending application that "conflicts" or is mutually exclusive with a previously granted license.⁵ However, EchoStar firmly believes that sharing of the extended Ku-band is feasible between an EchoStar and MSV satellite co-located at the 101° W.L. orbit location,⁶ and the parties have agreed to enter into discussions regarding this matter. In EchoStar's view, such coordination is viable based on the likely use of spot beams in the extended Ku-bands for both the EchoStar and MSV systems. EchoStar is committed to using spot beams and believes that MSV's system will also benefit from the use of spot beams on its feeder links in order to provide sufficient capacity to meet its stated performance objectives. EchoStar is committed to working with MSV to determine the optimum technical and operational means to achieve this goal without limiting the ability of either system to meet its performance objectives.

³ See *MSV Order* at ¶ 82. See EchoStar Petition for Clarification and/or Reconsideration (June 22, 2005). See also EchoStar Satellite L.L.C., Application for Review, File No. SAT-AMD-20040209-00014 (October 15, 2004); EchoStar Satellite L.L.C., Application for Review, File Nos. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343 (Jan. 26, 2005). On August 27, 2003, EchoStar filed an application ("EchoStar Application") to construct, launch and operate a geostationary satellite to provide Fixed-Satellite Service ("FSS") using the allotted extended Ku-band frequencies at the 101° W.L. orbital location. In November 2003, EchoStar amended its application ("EchoStar Amendment"). On February 9, 2004, the Bureau dismissed the EchoStar Application and the EchoStar Amendment without prejudice to refiling. See Letter to David K. Moskowitz, Senior Vice President and General Counsel, EchoStar Satellite Corporation, from Thomas S. Tycz, DA 04-323 (February 9, 2004) at 1 ("EchoStar Dismissal Letter")

⁴ Without explanation, MSV has also requested that to the extent the EchoStar Application is reinstated, it be dismissed as being "mutually exclusive" with the recently granted MSV Application. See *MSV Letter* at 2-3 n.9. This request should be denied as well for the reasons indicated above.

⁵ *MSV Letter* at 2.

⁶ See Letter from Mr. Pantelis Michalopoulos and Mr. Philip L. Malet (Counsel to EchoStar) to Mr. Bruce Jacobs (Counsel to MSV) (June 6, 2005) (Attachment A).

The Bureau has already acknowledged the possibility of sharing in the *MSV Order*⁷ and concluded that "[i]f the parties reach agreement, we will entertain a request that involves co-frequency operations."⁸ That "request" is already pending before the Commission in the form of the EchoStar Pending Application. Dismissing that application now would prejudice the ongoing coordination discussions between the parties, and possibly allow a subsequently filed application seeking co-frequency operations to move ahead of the EchoStar Pending Application in the Bureau's satellite queue.

Indeed, MSV's license appears to be based on the premise that MSV's authority to use the spectrum in question is non-exclusive. MSV's licensed use is limited to a "maximum of *two fixed satellite earth stations* within the continental United States."⁹ It would be absurd if this limited authorization were to foreclose any other use of the spectrum throughout the country.

Prior to receiving its authorization, MSV appeared to be receptive to the idea of sharing.¹⁰ With its recent grant, however, MSV appears to be hardening its position.¹¹ The Bureau should not allow MSV to parlay its limited authorization into a nationwide exclusive authorization. Instead, the Bureau should encourage coordination discussions between the parties. In any event, the successful coordination between EchoStar and MSV should not be a condition precedent to granting the EchoStar Pending Application. Consistent with normal practice, it should be made a condition of EchoStar's license. Dismissing the EchoStar Pending Application would only further embolden MSV to resist co-frequency sharing.

Accordingly, MSV's request for dismissal of the EchoStar Pending Application should be rejected. EchoStar looks forward to working with MSV to reach a coordination agreement that will

⁷ *MSV Order* at ¶16 n. 45.

⁸ *Id.*

⁹ *Id.* at ¶ 66 (emphasis added).

¹⁰ See, e.g., Comments of MSV at 6 ("MSV agrees with EchoStar that sharing may be possible and is prepared to work with EchoStar to attempt to reach an agreement on sharing"), filed in SAT-LOA-20040210-00015 (April 26, 2004).

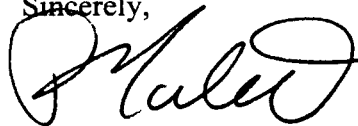
¹¹ See MSV Letter at 1 (claiming that the EchoStar Pending Application is "mutually exclusive" with the recently granted MSV application); Letter from Bruce D. Jacobs (Counsel to MSV) to Pantelis Michalopoulos and Philip L. Malet (Counsel to EchoStar) at 2 (June 15, 2005) ("Moreover, your proposal for two satellites to share the same frequencies at the same orbital location is novel. Any discussions regarding the feasibility of this untested concept will be highly technical in nature involving considerable engineering and legal resources.").

Marlene H. Dortch
June 23, 2005
Page 4

maximize the use of scarce spectral resources at the 101° W.L. orbit location. Dismissing the EchoStar Pending Application now as being mutually exclusive with the MSV Application is premature and would jeopardize the success of the ongoing coordination discussions between the parties.

Please let us know if you have any questions or would like to discuss this issue further.

Sincerely,



Pantelis Michalopoulos
Philip L. Malet

Counsel to EchoStar Satellite L.L.C.

cc: Donald Abelson, International Bureau
Thomas Tycz, International Bureau
Fern Jarmulnek, International Bureau
Robert Nelson, International Bureau
Cassandra Thomas, International Bureau
Jennifer Manner, Vice President, Regulatory Affairs, MSV
Bruce D. Jacobs and David S. Konczal, Counsel to MSV
David Bair, Vice President, Project Operations, EchoStar

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

Pantelis Michalopoulos
Philip L. Malet
202.429.3000
pmichalo@steptoe.com
pmalet@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Tel 202.429.3000
Fax 202.429.3902
steptoe.com

June 6, 2005

BY HAND DELIVERY

Bruce D. Jacobs, Esquire
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128

Re: EchoStar Satellite L.L.C.

File No. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343, Call Sign S2492

File No. SAT-LOA-20040210-00015, Call Sign S2615

Mobile Satellite Ventures Subsidiary LLC

File No. SAT-AMD-20001214-00171, SAT-AMD-20040209-00014, Call Sign S2358

Dear Bruce:

On behalf of EchoStar Satellite L.L.C. ("EchoStar"), this letter is being sent to you as counsel for Mobile Satellite Ventures Subsidiary LLC ("MSV") in the above-referenced application proceedings. As you are aware, MSV's and EchoStar's applications request the use of overlapping frequency bands (the extended Ku-band) at the same orbital location (101° W.L.). In light of the International Bureau's recent decision authorizing MSV to launch and operate an L-band MSS satellite using the extended Ku-band for its feeder link spectrum and MSV's stated willingness to discuss a sharing arrangement with EchoStar for the use of this spectrum,¹ EchoStar hereby requests the immediate commencement of coordination discussions between EchoStar and MSV concerning the co-frequency use of these frequency bands.

EchoStar has a pending application to construct, launch and operate an FSS satellite at the 101° W.L. orbital location using the 10.70-10.95/11.2-11.45 GHz (space to Earth) and the 12.75-13.25 GHz (Earth to space) frequency bands. See File No. SAT-LOA-20040210-00015, Call Sign

¹ See *In the Matter of Mobile Satellite Ventures Subsidiary LLC*, DA 05-1492 (released May 23, 2005) ("*MSV Order*").

Mr. Bruce D. Jacobs
June 6, 2005
Page 2

S2615.² While the Bureau recently authorized MSV to use the same frequency bands in connection with its L-band MSS satellite at 101° W.L., the Bureau did not preclude the possibility of co-frequency operations in these bands with an EchoStar satellite at the same orbital location. *See MSV Order* at ¶ 16, note 45 ("If the parties reach [a sharing agreement], we will entertain a request that involves co-frequency operations."). The Bureau further noted that EchoStar's Application for Review of the Bureau's decision to reinstate MSV's February 2004 amendment was still pending and that the grant of authority to MSV is subject to the outcome of that proceeding. *See MSV Order* at ¶ 16, note 44.

EchoStar has previously indicated on a number of occasions in these proceedings that it believes it is possible to coordinate shared co-frequency use with MSV of the overlapping extended Ku-band spectrum. *See Applications*, File Nos. SAT-AMD-20031126-00343 (Nov. 26, 2003) and SAT-LOA-20040210-00015 (Feb. 10, 2004) at Technical Annex 7, 24-26; Letters from Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C. to Marlene H. Dortch, Secretary, FCC (dated March 25, 2005 and April 19, 2005). In addition, as the *MSV Order* acknowledges, MSV has "state[d] that it is willing to discuss a sharing arrangement with EchoStar." *MSV Order* at ¶ 16 n. 45; *see also* Letter from Jennifer A. Manner, Vice President, Regulatory Affairs for MSV to Marlene H. Dortch, Secretary, FCC at 3 (April 4, 2005) ("MSV continues to be willing to discuss the potential to share frequencies with EchoStar."); *see also* Comments of MSV at 6 ("MSV agrees with EchoStar that sharing may be possible and is prepared to work with EchoStar to attempt to reach an agreement on sharing"), filed in SAT-LOA-20040210-00015 (April 26, 2004).

With the release of the *MSV Order*, EchoStar believes that the time is right to begin these coordination discussions in earnest. EchoStar is confident that co-frequency use of the extended Ku frequency bands is achievable between EchoStar's planned FSS satellite and the feeder links of MSV's planned L-band MSS satellite at 101° W.L. orbital location. Such coordination is viable based on the likely use of spot beams in the extended Ku-bands for both the EchoStar and MSV systems. EchoStar is committed to using such spot beams and believes that MSV's system will also benefit from the use of spot beams on its feeder links in order to provide sufficient capacity to meet its objectives.

² This pending application was submitted by EchoStar on February 10, 2004 in response to the Bureau's decision to dismiss without prejudice a previously-filed application by EchoStar to use the same frequency bands at the 101° W.L. orbit location. *See* File Nos. SAT-LOA-20030827-00179 (filed Aug. 27, 2003) and SAT-AMD-20031126-00343 (filed Nov. 26, 2003), Call Sign S2492; *see* Letter from Thomas S. Tycz to David K. Moskowitz, DA 04-323 (dated Feb. 9, 2004). EchoStar currently has pending before the Commission an Application for Review of the Bureau's decision to dismiss the August 27, 2003 application and accompanying November 26, 2003 amendment. *See* EchoStar Application for Review (Jan. 26, 2005). This letter and request for coordination discussions shall not be deemed a waiver of any of EchoStar's rights or arguments associated with its pending Applications for Review.

Mr. Bruce D. Jacobs
June 6, 2005
Page 3

The *MSV Order* permits a maximum of two MSV feeder-link earth station sites within the continental United States, *see MSV Order* at ¶ 66, and provided EchoStar's spot beams avoid the geographic areas of these MSV feeder-link sites, sufficient interference isolation can be achieved between the EchoStar and MSV transmissions to allow co-frequency operation. EchoStar is committed to working with MSV to determine the optimum technical and operational means to achieve this goal without limiting the ability of either system to meet its performance objectives. Such operation would be spectrally efficient and would therefore be consistent with FCC policies.

As previously indicated, EchoStar has pending Applications for Review requesting that the Commission review the Bureau's decisions to reinstate the MSV February 2004 amendment and to dismiss EchoStar's previously filed application and amendment for the same spectrum. In addition, EchoStar is considering filing a Petition for Reconsideration of the *MSV Order* in order to preserve its appeal rights and maintain the status of its pending extended Ku-band application. If the parties can come to a quick agreement on the ability to coordinate and share on a co-frequency basis the extended Ku-band at the same orbital location, then such appeals would become moot. EchoStar believes that it is in the interests of both parties to pursue coordination discussions not only in an effort to eliminate the need for additional pleadings, but to maximize the use of scarce spectral resources.

EchoStar looks forward to discussing the details of coordination with MSV as soon as possible. Please contact the undersigned to schedule a meeting between EchoStar and MSV personnel and representatives to further discuss spectrum sharing proposals. For your convenience, I have enclosed a copy of the already executed confidentiality agreement that is in place between MSV and EchoStar to facilitate such coordination discussions.

Sincerely,



Pantelis Michalopoulos
Philip L. Malet

Counsel to EchoStar Satellite L.L.C.

Enclosed Confidentiality Agreement

cc: Thomas Tycz, International Bureau (w/o enclosure)
Fern Jarmulnek, International Bureau (w/o enclosure)
Robert Nelson, International Bureau (w/o enclosure)
Cassandra Thomas, International Bureau (w/o enclosure)
Jennifer Manner, Vice President, Regulatory Affairs, MSV
David Bair, Vice President, Project Operations, EchoStar