

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

ECHOSTAR CORPORATION)

Application to Operate a C-Band)
Geostationary Satellite Orbit Satellite in the)
Fixed-Satellite Service at the 84.9° W.L.)
Orbital Location)

) File No. SAT-LOA-20090528-00060

) Call Sign S2791

To the International Bureau

PETITION FOR RECONSIDERATION

Jeffrey H. Blum
Senior Vice President
& Deputy General Counsel
EchoStar Corporation
1110 Vermont Avenue, NW, Suite 750
Washington, D.C. 20005
(202) 293-0981

Pantelis Michalopoulos
L. Lisa Sandoval
STEP TOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-3000
Counsel for EchoStar Corporation

August 30, 2010

SUMMARY

EchoStar Corporation (“EchoStar”) respectfully petitions the International Bureau to reconsider its *Memorandum Opinion and Order*¹ dismissing the above-captioned application to launch and operate a new C-band satellite at the 84.9° W.L. orbital location. In light of the significant legal and policy concerns raised in this petition, and particularly based on the additional information submitted herein, EchoStar requests that the Bureau reverse its *Order* and continue to process its application. In particular, EchoStar requests that the Bureau find that (1) EchoStar is not subject to the presumption of speculation established in Section 25.159(d) of the Commission’s rules, 47 C.F.R. § 25.159(d); (2) if EchoStar is found to be subject to the presumption, it has successfully rebutted the presumption; or (3) EchoStar qualifies for a waiver of the rule based on the circumstances of this case.

In finding that EchoStar is barred by the presumption from filing additional applications, the Bureau has mistakenly taken into account EchoStar’s Reverse Band Working Broadcasting-Satellite Service (“RBW BSS” or “RDBS”) licenses. In fact, Section 25.159(d) of the rules, 47 C.F.R. § 25.159(d), was never meant to apply to Direct Broadcast Satellite (“DBS”) applications or licenses at all. The *First-Come, First-Served Order* itself, which promulgated the rule, states this clearly: “[N]one of the rules adopted in this Order are applicable to DBS . . . applications, including but not limited to the licensing procedure rules.”² DBS licenses using the 17 GHz band in the reverse mode are no less “DBS” or “BSS” than 12/17 GHz DBS satellites. Indeed,

¹ EchoStar Corporation, *Memorandum Opinion and Order*, DA 10-1401 (rel. July 29, 2010) (“*Bureau Order*” or “*Order*”).

² 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 18 FCC Rcd. 10760 at 5, n.4 (2003) (“*First-Come, First-Served Order*”).

when the Commission subsequently promulgated service rules for RDBS satellites, it pointedly made these satellites subject only to specifically listed safeguards against speculation from the *First-Come, First-Served Order*, not including Section 25.159(d). Among other implications, this means that unbuilt RDBS satellites should not count in determining if an entity has two or more pending applications or licensed-but-unbuilt satellites. The presumption therefore should *not* bar applications by EchoStar unless and until EchoStar has two pending applications for Fixed-Satellite Service (“FSS”) satellites, or two licensed-but-unbuilt FSS satellites.³

The Bureau’s decision that EchoStar has been unable to rebut the “speculative purposes” presumption moreover is based on an incorrect interpretation of the term “speculation” as this term is used in the Commission’s *First-Come, First-Served Order*. The *Bureau’s Order* states: “Applying for licenses for multiple satellites, and later deciding to build some, but abandon others, is exactly the type of speculation the rule was meant to prevent.”⁴ In fact, the term “speculation” as used by the Commission has a different meaning. The *First-Come, First-Served Order* intended “speculator” to mean someone who obtains a license in order to turn around and sell it to someone else to make a profit. The Commission adopted the milestone schedule for satellite licenses to “reduce the profits a speculator can make from its sale,” and thereby

³ The *Bureau Order* also misapplies the 33% attribution standard to conclude that DISH’s missed milestones should be attributed to EchoStar for the purposes of determining whether the presumption of Section 25.159(d) is triggered. But that attribution standard, under the terms of the Commission’s rules, applies only to the five-satellite limit, and not to the presumption of Section 25.159(d). Without guidance from the Commission, the *Bureau’s Order* has transplanted this attribution standard to Section 25.159(d), on the ground that it would have made sense for the Commission to do so. For the purpose of construing a punitive provision, such as this presumption against speculation, DISH and EchoStar, two separate publicly listed companies, should be treated as separate entities.

⁴ *Bureau Order* ¶ 14.

“discourage some speculation.”⁵ The Commission further explained that “applicants are unlikely to purchase a license from a ‘speculator’ because they can simply apply for one.”⁶ EchoStar has never once speculated in the sense in which the *First-Come, First-Served Order* used the word.

The *Bureau’s Order* also would appear to disserve the Commission’s policy, mandated by Congress, of promoting competition in the FSS markets.⁷ In a related vein, the *Order* appears uninformed by the worst economic crisis this nation has experienced since 1929. Launching satellites into space is a high-cost, high-risk enterprise in the best of times, let alone in the current business environment. High barriers to entry mean that those few companies with the proven record of launching satellites and the wherewithal to launch more should be given encouragement, and should certainly not be barred from future undertakings.

EchoStar has both the pedigree and (with \$1.2 billion in current assets) the financial capability to continue to participate in the satellite business. EchoStar has a record that stands very respectably alongside those of its larger satellite competitors.⁸ EchoStar is not a speculator, and the Bureau should avoid the chilling implications of the *Order* for the entire satellite industry.

⁵ *Id.* ¶ 216.

⁶ *Id.*

⁷ *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands*, FCC 97-85, IB Docket No. 97-95 ¶ 8 (rel. Mar. 24, 1997).

⁸ EchoStar submits as Appendix 1 additional information on its satellite construction record that may not have been fully evaluated by the Bureau. That information includes a listing of its satellite achievements; a description of the many satellites that, while not licensed to EchoStar, would not have been built and launched but for EchoStar’s investment in them; and a description of EchoStar’s watershed contributions to spotbeam satellite deployment.

TABLE OF CONTENTS

	Page
SUMMARY	i
ARGUMENT	1
I. Introduction and Background	2
II. EchoStar Has Not Triggered the Presumption	3
A. The Bureau Incorrectly Attributed DISH’s Surrendered Licenses to EchoStar	3
B. EchoStar’s Licensed RDBS Satellites Should Not Be Included in the “Licensed-But-Unbuilt” Calculation in Section 25.159(d)	5
C. EchoStar Did Not Engage in “Speculation,” as the Term is Used by the Commission	7
III. EchoStar Hereby Provides Additional Information of Its Record of Innovation Which Would be Stunted by the <i>Bureau’s Order</i>	9
IV. EchoStar Should Not Be Branded a Speculator as a Matter of Commission Policy	12
V. Conclusion	14

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
ECHOSTAR CORPORATION)	File No. SAT-LOA-20090528-00060
)	Call Sign S2791
Application to Operate a C-Band)	
Geostationary Satellite Orbit Satellite in the)	
Fixed-Satellite Service at the 84.9° W.L.)	
Orbital Location)	

To the International Bureau

PETITION FOR RECONSIDERATION

ARGUMENT

Pursuant to Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and Section 1.106 of the Commission’s rules, 47 C.F.R. § 1.106, EchoStar Corporation (“EchoStar”) respectfully petitions the Bureau to reconsider its *Order* dismissing EchoStar’s application to launch and operate a C-band satellite at 84.9° W.L. orbital location.¹ EchoStar is also submitting additional information relevant to the Bureau’s evaluation of these matters. In light of the analysis found in this petition, and particularly based on the additional information submitted here, EchoStar requests that the Bureau find that (1) EchoStar is not subject to the presumption of speculation established in Section 25.159(d) of the Commission’s rules, 47

¹ *Bureau Order ¶ 1.*

C.F.R. § 25.159(d); (2) if EchoStar is found to be subject to the presumption, it has successfully rebutted the presumption; or (3) EchoStar qualifies for a waiver of the rule.²

I. Introduction and Background

On July 29, 2010, the Bureau dismissed EchoStar’s application to operate a GSO FSS space station using the C-band frequencies at the 84.9° W.L. orbital location.³ The Bureau held that “[i]n an almost three-year period, from December 2006 through September 2009, EchoStar did not implement five of its licensed satellites,”⁴ triggering the presumption of 47 C.F.R. § 25.159(d) that EchoStar has obtained one or more of these licenses for speculative purposes. That presumption, standing alone, is not enough to bar acceptance and grant of future applications. For the bar to “spring” to life, the license in question must also have two or more satellite applications pending, or two licensed-but-unbuilt satellite systems of any kind. But the Bureau held that this prerequisite, too, is satisfied here. In the Bureau’s view, the bar applies because EchoStar does have two or more licensed-but-unbuilt satellites – its five licensed RBW BSS satellites.⁵

The Bureau also rejected EchoStar’s argument that its affiliate, DISH Network Corporation (“DISH”), was responsible for surrendering some of the relevant licenses because the Bureau found that EchoStar has an attributable interest in the licensee that missed the

² EchoStar reserves the right to request a new waiver of the presumption, based on an additional showing of good cause for such a waiver, at an appropriate point in the future.

³ See File No. SAT-LOA-20090528-00060 (filed May 28, 2009) (“85° W.L. Application”).

⁴ *Bureau Order* ¶ 1.

⁵ *Bureau Order* ¶ 3 (“[A]t that time, EchoStar had five pending applications for satellites in the Broadcasting-Satellite Service (BSS)”).

milestones, EchoStar Satellite Operating L.L.C., a subsidiary of DISH. Moreover, the Bureau rejected EchoStar's argument that neither it nor its affiliate, DISH, missed any milestones because the licenses were surrendered before the milestone had been reached.⁶ The Bureau declined to accept EchoStar's evidence of its past success at bringing satellite assets into use as sufficient to rebut the presumption, stating that "EchoStar's overall status in the industry does not, in itself, provide evidence that EchoStar did not engage in speculative activity in applying for certain satellite licenses."⁷ Lastly, the Bureau held that EchoStar had not provided adequate evidence that it is likely to construct all of its licensed satellites and the proposed C-band satellite at 85° W.L., thereby denying EchoStar's request for a waiver.⁸

II. EchoStar Has Not Triggered the Presumption

A. The Bureau Incorrectly Attributed DISH's Surrendered Licenses to EchoStar

The Bureau incorrectly applied the attribution rule set out in Section 25.159(c) to attribute licenses surrendered by EchoStar's affiliate, DISH, to EchoStar to trigger the Section 25.159(d) presumption. The attribution rule applies only when calculating the number of pending applications and licensed-but-unbuilt satellites maintained by the applicant. Specifically, the attribution rule set forth in 47 C.F.R. § 25.159(c), which precedes Section 25.159(d), applies only "for purposes of the limits on the number of pending space station

⁶ *Id.* ¶¶ 10-12.

⁷ *Id.* ¶ 14.

⁸ *Id.* ¶ 19.

applications and licensed-but unbuilt satellite systems in this paragraph.”⁹ That does not include Section 25.159(d).

The discussion of the attribution standard in the *First-Come, First-Served Order* confirms the standard’s limited scope. The Commission adopted the attribution rule in order “to determine who is an ‘applicant’ for purposes” of the limit on the number of applications an applicant may have pending.¹⁰ In the Commission’s words: “if one applicant has an interest in another applicant, in which the equity (including all stockholdings, whether voting or non-voting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value (defined as the aggregate of all equity plus all debt) of that applicant, the pending applications and unbuilt satellites of both applicants will be counted together for purposes of the limits.”¹¹

The Bureau states its belief that, in light of the “purpose” of § 25.159(d), it makes sense to expand application of the attribution rule to that section of the rules, too.¹² It is not proper, however, under the Commission’s rules for a *Bureau Order* to transplant the standard to a rule to which it does not apply.¹³

⁹ 47 C.F.R. § 25.159(c).

¹⁰ *First-Come, First-Served Order* ¶ 234.

¹¹ *Id.* ¶ 238.

¹² *Bureau Order* ¶ 10 (“EchoStar argues, in essence, that while the rule considers attributable interest in determining the number or applications and unbuilt satellites, attributable interests should not be considered in determining whether a licensee has a pattern of missing milestones. This interpretation undercuts the rule’s purpose.”).

¹³ 47 C.F.R. § 0.261 (setting forth the scope of authority delegated to the International Bureau).

B. EchoStar’s Licensed RDBS Satellites Should Not Be Included in the “Licensed-But-Unbuilt” Calculation in Section 25.159(d)

In finding that EchoStar is barred by the presumption from filing additional applications, the Bureau has mistakenly taken into account EchoStar’s licensed RDBS satellites. In fact, Section 25.159(d) of the rules does not apply to DBS applications or licenses at all. The *First-Come, First-Served Order* itself, which promulgated the rule, states this clearly: “DBS licensees will continue to be required with the due diligence requirements of Section 25.148(b) rather than the milestone requirements we adopt in Section VII.C below.”¹⁴ DBS licenses using the 17 GHz band in the reverse mode are no less “DBS” than 12/17 GHz DBS licenses. The 17.3–17.8 GHz band is allocated to BSS downlinks, exactly as the 12.2-12.7 GHz band is.¹⁵

RDBS satellites continued to be beyond the scope of Section 25.159(d) after the Commission issued its initial order establishing licensing rules for satellite operations in the 17/24 GHz Broadcasting-Satellite Service. It applied to RDBS applications specific safeguards set out in the *First-Come, First-Served Order*.¹⁶ The specific safeguards were limited to filing a bond, meeting the milestones set out in Section 25.164, and the general limitations imposed on FSS applicants to five pending or licensed-but-unbuilt satellites.

Here is what the Commission said:

In the *NPRM*, the Commission noted that the *First Space Station Licensing Reform Order* adopted a package of safeguards designed

¹⁴ *First-Come, First-Served Order* at 5, n.4.

¹⁵ See 47 C.F.R. § 2.106 (Table of Frequency Allocations).

¹⁶ The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd. 8842 ¶¶ 12-16 (2007) (“*RDBS Order*”).

to discourage speculative applications and to ensure that licensees remain committed and able to proceed with system implementation in a timely manner. Applying these safeguards to the 17/24 GHz BSS would require licensees to post a \$3 million bond with the Commission within 30 days of license grant and construct and launch the satellite consistent with the milestone schedule specified in Section 25.164 of the Commission's rules. The bond becomes payable if a licensee fails to meet a milestone, rendering the license null and void. Further, GSO-like applicants are limited to a total of five pending applications and/or licensed but unlaunched satellites in a particular frequency band at any one time, and must submit substantially complete applications or face dismissal, and cannot sell their place in the processing queue.¹⁷

Thus, the Commission pointedly omitted the presumption of Section 25.159(d) from the list of safeguards incorporated by reference. Moreover, paragraph 10 of the RDBS *NPRM*, to which the *RDBS Report and Order* cited, is similarly silent:

Our first-come, first-served approach for processing space station applications contains a package of safeguards to ensure that licensees remain committed and able to proceed with system implementation in a timely manner. Our rules require all GSO-like applicants awarded a license under this procedure to post a \$3 million performance bond with the Commission within 30 days of license grant. They also require licensees to construct and launch the satellite consistent with a specified milestone schedule. If the licensee fails to meet an implementation milestone, the license becomes null and void and the bond is executed. The rules also limit applicants to a total of five pending applications and licenses for unbuilt satellites in a specific frequency band at any one time. If we decide to include 17/24 GHz BSS in the processing rules and requirements of the *Space Station Licensing Reform Orders*, we propose to apply these accompanying safeguards, including applying the standard milestone schedule in Section 25.164 of the Commission's rules to 17/24 GHz BSS systems.¹⁸

¹⁷ *Id.* ¶ 12.

¹⁸ The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band, *Notice of Proposed Rulemaking*, 21 FCC Rcd. 7426 ¶ 10 (2006) (internal citations omitted).

The conclusion is difficult to escape. The presumption of Section 25.159(d) could not have been made applicable to RDBS satellites *sub silentio*. While the Commission cited to Section 25.159 in its discussion of the limit on pending applications and unbuilt satellites, it specifically noted only the general limit of five GSO applications or unbuilt satellites.¹⁹ In light of this evidence, the meaning of the phrase “two or more satellite applications pending, or two licensed-but-unbuilt satellite systems of any kind,” as used in Section 25.159(d), becomes clear. That phrase refers to satellites of any kind covered by the rules (*e.g.* geostationary or non-geostationary, FSS satellites operating in different bands). It does not refer to DBS satellites, including RDBS satellites.

Unbuilt RDBS satellites should thus not count in determining if an entity has two or more pending applications or licensed-but-unbuilt satellites. The presumption should *not* bar applications by EchoStar until and unless EchoStar has two pending applications for FSS satellites, or two licensed-but-unbuilt FSS satellites. Neither is the case.

C. EchoStar Did Not Engage in “Speculation,” as the Term Is Used by the Commission

The Bureau’s decision that EchoStar has been unable to rebut the “speculative purposes” presumption is moreover based on an incorrect understanding of the term “speculation” as this term is used in the Commission’s *First-Come, First-Served Order*. The *Bureau’s Order* states: “Applying for licenses for multiple satellites, and later deciding to build some, but abandon others, is exactly the type of speculation the rule was designed to prevent.”²⁰ Not so. Speculation as used by the Commission has a different meaning. *The First-Come, First-Served*

¹⁹ *RBDS Order* ¶ 12.

²⁰ *Bureau Order* ¶ 14.

Order intended “speculator” to mean someone who obtains a license to turn around and sell it to someone else to make a profit. The Commission adopted the milestone schedule for satellite licenses to “reduce the profits a speculator can make from its sale,” and thereby “discourage some speculation.”²¹ The Commission further explained that “applicants are unlikely to purchase a license from a ‘speculator’ because they can simply apply for one.”²² Further belaboring the meaning of the term in its *Order on Reconsideration*, the Commission explained that “a stronger economy would make it easier for a speculative applicant to sell a license for profit because there would be more potential buyers, and so would further encourage speculative applications.”²³ Speculation is not uncertainty of business plans – particularly in today’s world, businesses would not be able to escape the brand of “speculator” if it were defined in this manner. It means trafficking in licenses. This is consistent with the meaning of the term “speculation” and “speculator” in other areas of the Commission’s rules.²⁴

This is, then, the meaning of “speculative” for the purposes of the speculative purposes presumption. Why did the Commission presume that a licensee with a history of obtaining licenses and then surrendering them before a milestone deadline is engaging in speculative activity? Not because a change of plans amounts to speculation. Neither the noun “speculation”

²¹ *First-Come, First-Served Order* ¶ 216.

²² *Id.*

²³ In re Amendment of the Commission’s Space Station Licensing Rules and Policies, *First Order on Reconsideration and Fifth Report and Order*, 19 FCC Rcd. 12367 ¶ 72 (2004).

²⁴ See, e.g., *Application of TRW, Inc.*, 17 FCC Rcd. 24625 ¶ 16 (2002) (explaining the Commission promulgated 47 C.F.R. § 25.145(d), which has since been repealed, to discourage speculators by “prohibit[ing] Ka-band satellite licensees from selling a bare license for profit”) (citations omitted); *Creation of a Lower Power Radio Service*, 22 FCC Rcd. 21912 (2007) ¶ 55 (“The rapid flipping of hundreds of [FM translator] permits . . . does suggest that our current procedures may be insufficient to deter speculative conduct.”).

nor any of its cognates is used by the *First-Come, First-Served Order* in this manner. Rather, the Commission presumed that such a licensee obtained the licenses in hopes of selling them and failed to do so. There is no suggestion in the Bureau Order that EchoStar ever tried to assign or transfer control over any surrendered licenses.

III. EchoStar Hereby Provides Additional Information of Its Record of Innovation, Which Would Be Stunted by the *Bureau's Order*

The Bureau was incorrect to find that EchoStar has not adequately rebutted the presumption if it indeed is found to apply. The Commission's *First-Come, First-Served Order* makes clear that the presumption is not meant to be a draconian sanction, and it is not to be applied in a manner that discourages applications for innovative satellites. The Commission noted: "This stricter limit should enable us to address instances of warehousing, while also addressing [the Satellite Industry Association's ("SIA's")] and Intelsat's concern about discouraging parties from applying for satellite licenses regardless of their intent to proceed with their business plans."²⁵ As the *Order* further explained, SIA had voiced concerns "that imposing penalties other than the loss of the license in question on licensees that fail to meet their milestones could discourage applicants from filing licenses for new or innovative satellite systems."²⁶ Intelsat has also opposed limits on applications in the same frequency band if a milestone was missed because "such a penalty would discourage licensees from taking necessary risks and could overly penalize such licensees."²⁷ Yet the *Bureau Order* has precisely the effect that the *First-Come, First-Served Order* intended to avoid – to penalize innovative plans in the

²⁵ *First-Come, First-Served Order* ¶ 200.

²⁶ *Id.* ¶ 198.

²⁷ *Id.*

absence of any speculative (*i.e.* trafficking) intent and to apply the presumption in a draconian manner indeed.

As an initial matter, the specific licenses that were ultimately returned by DISH, were not obtained for speculative purposes. DISH contributed substantial funds to the progress of the satellites, including the posting of the required bonds and meeting a number of the milestones.²⁸

Furthermore, EchoStar has demonstrated that it is not a speculator. As described in its application, EchoStar has made great efforts to bring satellite spectrum into commercial use, including construction, leasing or buying state-of-the-art satellite capacity, and purchasing assets of failing satellite companies.²⁹ As EchoStar stated in its application, EchoStar is a satellite industry leader that “remains one of the most active companies in bringing satellite projects to fruition for the benefit of U.S. consumers.”³⁰

The Bureau did not dismiss the relevance of this information, but discounted it as insufficient standing alone.³¹ Accordingly, EchoStar hereby submits additional evidence about its accomplishments in several respects. First of all, EchoStar’s record can be evaluated more

²⁸ DISH posted one bond and met two milestones for its Ka-band license at 117° W.L., its Ku-band license at 109° W.L., and its Ku-/Ka-band license at 121° W.L. *See* File Nos. SAT-LOA-20030827-00177; SAT-MOD-20041008-00196; SAT-MOD-20041208-00218 (Call Sign S2490) (117° W.L.); SAT-LOA-20031211-00350; SAT-MOD-2005-0930-00195; SAT-AMD-20051118-00249 (Call Sign S2607) (109° W.L.); SAT-LOA-20031215-00355; SAT-MOD-20041102-00206; SAT-MOD-20050617-00127 (Call Sign S2609) (121° W.L.). DISH posted its bond and met its third milestone to commence construction for its Ku-band license at 113° W.L. *See* File No. SAT-LOA-20040803-00154; SAT-MOD-20070323-00055 (Call Sign S2636). Lastly, EchoStar posted its bond and met its third milestone to commence construction for its Ka-band license at 97° W.L. *See* File No. SAT-LOA-20030827-00186; SAT-AMD-20031203-00345; SAT-MOD-20050308-00059 (Call Sign S2499).

²⁹ *See* 85° W.L. Application at 6-7.

³⁰ *Id.*

³¹ *Bureau Order* ¶¶ 13-14.

meaningfully if, instead of being viewed in a vacuum, it is placed alongside that of other much larger satellite operators. License surrenders are not an uncommon phenomenon for even the largest satellite operators. Intelsat, for example, surrendered four RBW BSS licenses in 2009.³² DIRECTV, for its part, surrendered one RBW BSS license at the nominal 107° W.L. orbital location in 2009,³³ and withdrew its application for authority to launch and operate another RBW BSS satellite system at the nominal 119° W.L. orbital location in 2008.³⁴ This is not to say that Intelsat or DIRECTV are speculators. They are not, any more than EchoStar is. Certainly, EchoStar should be treated by the Bureau the same as similarly situated Commission licensees.

Second, EchoStar's accomplishments have been obscured and unduly minimized by an accidental characteristic of the transactions through which it has purchased or leased its satellites.

³² See Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC to Marlene H. Dortch, Secretary, FCC (dated June 24, 2009), File Nos. SAT-LOA-20050210-00030, SAT-AMD-20051118-00239, SAT-AMD-20080114-00009, SAT-AMD-20080617-00124, SAT-AMD-20080701-00137 (Call Sign S2661); Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC to Marlene H. Dortch, Secretary, FCC (dated July 14, 2009), File Nos. SAT-LOA-20050210-00028, SAT-AMD-20080701-00134, SAT-AMD-20080617-00126, SAT-AMD-20080114-00011, SAT-AMD-20051118-00241 (Call Sign S2659); Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC to Marlene H. Dortch, Secretary, FCC (dated Aug. 27, 2009), *filed in* File Nos. SAT-LOA-20050210-00029, SAT-AMD-20051118-00240, SAT-AMD-20080114-00012, SAT-AMD-20080617-00125, SAT-AMD-20080701-00135 (Call Sign S2660) (surrendering the 99.10° W.L. license); Letter from Jennifer D. Hindin, Counsel to Intelsat North America LLC to Marlene H. Dortch, Secretary, FCC (dated Aug. 27, 2009), File Nos. SAT-LOA-20050210-00031, SAT-AMD-20051118-00238, SAT-AMD-20080114-00008, SAT-AMD-20080617-00123, SAT-AMD-20080701-00138 (Call Sign S2662) (surrendering the 90.90° W.L. license).

³³ See Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC to Marlene H. Dortch, Secretary, FCC (dated Aug. 27, 2009), File Nos. SAT-LOA-19970605-00049, SAT-AMD-20051118-00226, SAT-AMD-20080114-00015, SAT-AMD-20080321-00078 (Call Sign S2242).

³⁴ See Letter from Letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC to Marlene H. Dortch, Secretary, FCC (dated Dec. 9, 2008), File Nos. SAT-LOA-19970605-00051, SAT-AMD-20051118-00224, SAT-AMD-20080114-00017, SAT-AMD-20080321-00080, SAT-AMD-20080908-00166 (Call Sign S2244).

Specifically, while EchoStar operates a number of satellites (EchoStar 3, 4, 6, 8, 9, 12, and 15) under its own licenses, it leases or has bought all of the satellite capacity on satellites licensed to others. Thus, while AMC-15, AMC-16, and Anik F3 are licensed to SES and Telesat, none of these satellites would be in operation today if all or substantially all of this capacity had not been acquired by EchoStar. The same is true of the Ciel 2 satellite at 129° W.L. EchoStar requests that the Bureau take into account these facts in evaluating EchoStar's record.

Finally, EchoStar submits additional information on its watershed investment in, and successful deployment of, spot beam capacity. Spot beam satellite architecture is hugely complex and expensive, and did not exist except on paper for the most part of the 1990s. Its deployment was pioneered by only three companies – EchoStar, DISH, and DIRECTV. It has redounded to the benefit of consumers across the nation. It is thanks to these investments that competition to cable television operators has been made possible for the first time. Many of these benefits would not have come to pass without the creativity, resources, and risk-taking of EchoStar. Appendix 1 describes in greater detail EchoStar's investment in spot beam capacity and in the FSS industry.

IV. EchoStar Should Not Be Branded a Speculator as a Matter of Commission Policy

As a policy matter, too, the *Bureau's Order* would appear to disserve the Commission's policy, mandated by Congress,³⁵ of promoting competition in the satellite markets.³⁶ In a related vein, the *Order* appears uninformed by the worst economic crisis this nation has experienced

³⁵ Communications Satellite Act—Amendment, Pub. L. No. 109-34, 119 Stat. 377 § 404 (2005), *codified at* 47 U.S.C. § 744.

³⁶ Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands, *Notice of Proposed Rulemaking*, FCC 97-85, IB Docket No. 97-95 ¶ 8 (rel. Mar. 24, 1997).

since 1929. Launching satellites into space is a high-cost, high-risk enterprise in the best of times, let alone in the current lean years. High barriers to entry mean that these few companies with the proven record of launching satellites, and the wherewithal to launch more, should be given all appropriate encouragement and should certainly not be barred from future undertakings in the area.

EchoStar has both the pedigree and (with \$1.2 billion in current assets) the financial capability to continue to launch and operate satellites. While a smaller company than several of its competitors, EchoStar has a record that stands very respectably alongside those of its larger competitors. As discussed above, other satellite companies have similarly been forced to change their business plans and surrender licenses during this economic recession. To exclude any of them from filing satellite applications would discourage investment and encourage a flight to other licensing administrations.

What is more, of all the companies operating FSS satellites in the United States today, EchoStar is the only U.S. company. U.S. policymakers have been increasingly and justifiably concerned about the depleting treasure chest of U.S. expertise in the satellite industry. In its recently completed study, the Center for Strategic and International Studies emphatically notes this problem. In the report's words, "[i]n the global commercial communications satellite market, where the United States had a technical and qualitative lead over the international competition in the 1990s, global competitors have closed the gap in the last decade."³⁷ The U.S. Congress is also sensitive to the issue of promoting American know-how in general, as evidenced by the Buy American provisions in the American Recovery and Reinvestment Act of

³⁷ Ctr. for Strategic and Int'l Studies, National Security and the Commercial Space Sector: An Analysis and Evaluation of Options for Improving Commercial Access to Space 26 (July 2010).

2009.³⁸ Barring the one U.S. satellite operator from future FSS applications and leaving the field to foreign operators exclusively would only entrench this problem more deeply.

V. Conclusion

For the foregoing reasons, the Bureau should reconsider and set aside its *Order* as suggested above.

Respectfully submitted,

Jeffrey H. Blum
Senior Vice President
& Deputy General Counsel
EchoStar Corporation
1110 Vermont Avenue, NW, Suite 750
Washington, D.C. 20005
(202) 293-0981

_____/s/
Pantelis Michalopoulos
L. Lisa Sandoval
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-3000
Counsel for EchoStar Corporation

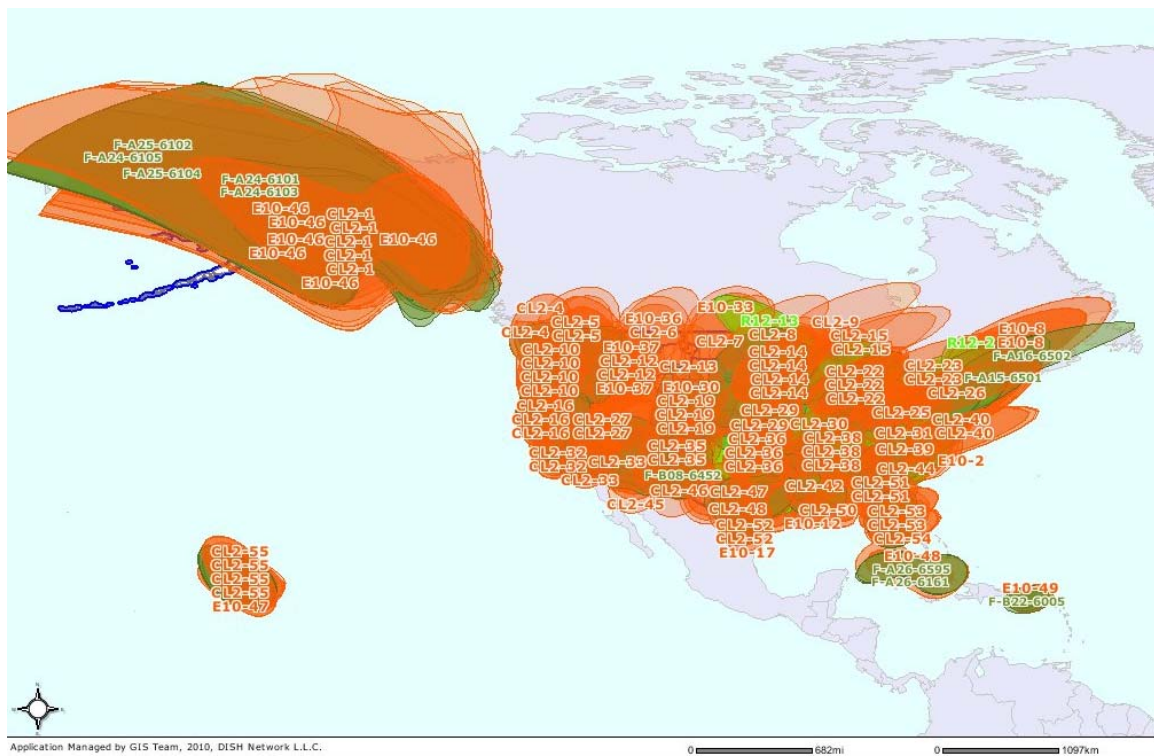
August 30, 2010

³⁸ Pub. L. 111-5, § 1605 (2009) (“None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.”).

Appendix 1

EchoStar has made significant investments in the last five years in upgrading and expanding the capabilities of its DBS and FSS satellite fleet to provide more and higher-quality services while complying with the Commission's carry-one-carry-all requirements for local direct-to-home video service. Accordingly, there should be no question that EchoStar has the ability and willingness to invest, plan, and execute enormous satellite projects, and achieve a longstanding Congressional and Commission goal: to serve all 210 defined U.S. DMAs.

EchoStar spot beams today fully cover all of CONUS and (most) Non-Contiguous U.S. Territories:



Specifically, EchoStar originally sought Ku-band FSS capacity to increase delivery of local-into-local services. EchoStar and DISH subsequently migrated many local-into-local offerings to DISH's EchoStar 10, located at 110° W.L., and to satellites deployed at 129° W.L. (first EchoStar 5 and 6, now Ciel 2). The operation and bringing into use of the 129° W.L. orbital location was another first – EchoStar's first use of a non-U.S. BSS slot to increase EchoStar's DBS services to the United States. As the need to expand EchoStar's HD local-into-local offerings increased, EchoStar began utilizing the spot beam capacity of EchoStar 12 (formerly Rainbow-1). Use of EchoStar 12 required expanding EchoStar's ground infrastructure considerably. This in turn required significant engineering to adapt EchoStar's spot beam designs and investment, and to build out four additional uplinks to support its operational requirements. Notably, because of the need to "backhaul" broadcast stations to its uplink centers, EchoStar has

become one of the largest users of terrestrial fiber in the nation. While DIRECTV chose the route of the Ka-band to serve its customers, EchoStar continued to expand its BSS capacity through international coordination and negotiations to create more capacity for its U.S. customers at previously unused BSS slots. This international coordination and negotiation effort resulted in the operation and utilization of two new orbital locations, integrated into the EchoStar fleet: 77° W.L. and 72.7° W.L. In support of this ongoing expansion, EchoStar designed and built its aforementioned Ciel 2, EchoStar 11, EchoStar 14, EchoStar 15, and Quetzsat satellites. All of these undertakings have amounted to billions of dollars in investment.

As the third FSS service provider in the United States, EchoStar has increased the competition and service choices for consumers to the benefit of the general public. At the present time, EchoStar operates and provides service from a fleet of FSS satellites – EchoStar 9 at 121° W.L., Anik F3 at 118.7° W.L., AMC-15 at 105° W.L., and AMC-16 at 85° W.L. – with a nearly 90% utilization of this FSS capacity. EchoStar is exploring and pursuing the further expansion of its FSS services by obtaining additional orbital locations licensed directly to EchoStar for utilization of its satellite fleet rather than relying on the orbital rights held and controlled by third parties. Therefore, one option EchoStar is pursuing is the potential opportunity for the launch and operation of a combined hybrid C-/Ku-band satellite, utilizing an EchoStar C-band license in cooperation with an 85° W.L. Ku-band license holder. This will allow EchoStar to build a new spacecraft to expand its FSS offerings.

In summary, EchoStar believes it has demonstrated that it is more than capable of developing the spectrum resources licensed to it for the benefit of the public good.