

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

In the Matter of)	
)	
EchoStar Satellite Corporation)	File Nos. SAT-MOD-20010810-00071
)	SAT-A/O-20010810-00073
Application for Minor Modification of)	
Direct Broadcast Satellite Authorization,)	Call Sign DBS8801
Launch and Operating Authority for EchoStar 7)	

ORDER AND AUTHORIZATION

Adopted: January 15, 2002

Released: January 16, 2002

By the Chief, Satellite and Radiocommunication Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant EchoStar Satellite Corporation (“EchoStar”) authority to launch and operate a new direct broadcast satellite (“DBS”), EchoStar 7, and co-locate it with EchoStar’s existing network of satellites at the 119° W.L. orbital location. This authorization will allow EchoStar to use its frequencies at 119° W.L. more efficiently and expand its programming options, thereby serving the public interest.

II. BACKGROUND

2. EchoStar provides DBS service to U.S. consumers from the 61.5° W.L., 110° W.L., 119° W.L., and 148° W.L. orbit locations.¹ EchoStar now seeks to launch and operate a new satellite, EchoStar 7, and co-locate it with its EchoStar 4 and EchoStar 6 satellites at 119° W.L.² In support of its application, EchoStar explains that EchoStar 7, a spot beam satellite, will increase DBS consumers’ programming choices, improve EchoStar’s spectrum efficiency, and enhance the system’s capacity to provide local broadcast signals under the broadcast signal carriage provisions of the Satellite Home

¹ Application of EchoStar Satellite Corporation for Minor Modification of DBS Authorization, Launch and Operating Authority for EchoStar 7, File Nos. SAT-MOD-20010810-00071 & SAT-A/O-20010810-00073, at 1 (August 10, 2001) (EchoStar Application).

² *Id.* at 2. EchoStar is authorized to operate DBS channels 1-21 at the 119° W.L. orbit location. *Id.* at 2 & nn.3, 4. EchoStar 4 and EchoStar 6 are currently located at 118.9° W.L. and 119.05° W.L., respectively. *Id.* at 3. *See also EchoStar Satellite Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 23636, 23642 ¶ 14 (Sat. & Radiocomm. Div. 2000).

Viewer Improvement Act of 1999 (“SHVIA”) and the Commission’s rules implementing SHVIA.³ These provisions (otherwise known as “local-into-local” service) require satellite carriers to carry – upon request – all local television broadcast stations’ signals in local markets in which the satellite carriers carry at least one television broadcast signal pursuant to the statutory copyright license, subject to other carriage provisions of SHVIA.⁴

3. In response to public notice of EchoStar’s application,⁵ Northpoint Technology, Ltd. and Broadwave USA, Inc. (collectively, “Northpoint”) and the National Association of Broadcasters (“NAB”) filed pleadings,⁶ to which EchoStar responded.⁷ Among other things, Northpoint requested that we stay action on EchoStar’s application, asserting that EchoStar had not made all the technical data in its application publicly available.⁸ EchoStar, subsequently, provided that information to Northpoint. Consequently, Northpoint withdrew its motion for stay.⁹ Accordingly, it is unnecessary to address issues related to the stay request.

³ EchoStar Application at 6-7 (citing the Satellite Home Viewer Improvement Act of 1999, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (November 29, 1999) (“SHVIA”), *codified at* 47 U.S.C. § 338, and *Implementation of the Satellite Home Viewer Improvement Act of 1999*, CS Docket No. 00-96, Report and Order, 16 FCC Rcd 1918 (2000), Order on Reconsideration, 16 FCC Rcd 16544 (2001)). The U.S. Court of Appeals for the Fourth Circuit recently upheld the constitutional validity of SHVIA and the reasonableness of the Commission’s rules promulgated thereunder. *See Satellite Broadcasting and Communications Association v. FCC*, ___ F.3d ___, 2001 WL 1557809 (4th Cir., December 7, 2001).

⁴ 47 U.S.C. § 338; 47 C.F.R. § 76.66(b).

⁵ Public Notice, Report No. SAT-00080 (rel. August 24, 2001).

⁶ *See* Petition of Northpoint Technology, Ltd. and Broadwave USA, Inc. to Stay Proceedings Pending Disclosure and Analysis of Data Regarding Planned Signals, File Nos. SAT-MOD-20010810-00071 & SAT-A/O-20010810-00073 (September 24, 2001) (Northpoint Petition); Letter of Henry L. Baumann & Benjamin F.P. Ivins to Magalie Roman Salas, Secretary, FCC, File Nos. SAT-MOD-20010810-00071 & SAT-A/O-20010810-00073 (September 24, 2001) (NAB Comments).

⁷ Opposition of EchoStar Satellite Corporation and Motion to Strike, File Nos. SAT-MOD-20010810-00071 & SAT-A/O-20010810-00073 (October 4, 2001) (EchoStar Opposition). EchoStar’s Opposition claims that NAB violated the Commission’s *ex parte* rules for restricted proceedings by not serving its comments on EchoStar; rather, EchoStar obtained a copy of NAB’s comments from members of the press. *Id.* at 9 (citing 47 C.F.R. § 1.1208). We do not find that the failure to serve these comments has tainted the application proceeding, and it does not appear that EchoStar’s ability to fully and fairly present arguments regarding the issues in NAB’s comments was unduly prejudiced by the lack of service. *See, e.g., Beehive Telephone, Inc., et al. v. The Bell Operating Companies*, Memorandum Opinion and Order, 12-FCC Rcd 17930, 17945-46 ¶ 30 (1997) (citing *PATCO v. FLRA*, 685 F.2d 547, 564 (D.C. Cir. 1982)), *aff’d*, 179 F.3d 941 (D.C. Cir. 1999).

⁸ Northpoint Petition at 1-2.

⁹ Notice of Withdrawal of Motion to Stay; Opposition to Motion to Strike; and Reply Comments of Northpoint Technology, Ltd. and Broadwave USA, Inc., File Nos. SAT-MOD-20010810-00071 & SAT-A/O-20010810-00073, at 1-2 (October 15, 2001) (Northpoint Reply).

III. DISCUSSION

4. Northpoint and NAB's primary concerns relate to EchoStar's satellite design, specifically, that one of the proposed EchoStar 7 spot beams will be directed toward Mexico.¹⁰ Northpoint comments that if EchoStar's purpose in launching EchoStar 7 is to enhance EchoStar's capacity to provide local broadcast signals into local markets pursuant to SHVIA, then the Commission should require EchoStar to direct all of its proposed spot beams to locations within the United States.¹¹ NAB similarly comments that it is inconsistent for EchoStar to argue, in other proceedings, that it lacks capacity to offer local-into-local service in additional cities, while designing a satellite with a beam over Mexico.¹² EchoStar responds that EchoStar 7 is designed "to maximize service to the entire United States, including Alaska and Hawaii," and it could not technically direct this beam into the United States without causing harmful self-interference into other spot beams in EchoStar's fleet.¹³ Rather than leave one spot beam slot unused, EchoStar "decided to direct it toward Mexico, where it may be used in the event it becomes economically and legally feasible for EchoStar to provide DBS service in that country."¹⁴

5. SHVIA does not require DBS operators to use all satellite beams for local-into-local service, nor does SHVIA mandate a specific satellite design based on the satellite's potential to provide local-into-local service. Rather, satellite carriers have the choice to serve any particular local market. A review of the EchoStar 7 application reveals that 14 out of 15 beams are directed to the United States, allowing for increased efficiency and capacity to enable EchoStar to increase the number of local communities it may choose to serve under SHVIA's broadcast signal carriage provisions.¹⁵ Commission policy allows satellite operators flexibility in the technical design of their space stations to best implement their business plans.¹⁶ In addition, we note that the Commission permits DBS licensees to provide DBS service in other countries, in accordance with U.S. treaty obligations, from U.S. DBS orbit locations, provided the satellite operator obtains all necessary approvals from the foreign administration.¹⁷ For these reasons, we find that granting EchoStar's application is in the public interest.

¹⁰ Northpoint Petition at 2-3 & Reply at 2-3; NAB Comments at 1-2.

¹¹ Northpoint Petition at 3.

¹² NAB Comments at 1-2.

¹³ *Id.* at 6-7; *but see* Northpoint Reply at 3-4 (questioning EchoStar's technical explanation for EchoStar 7's design).

¹⁴ EchoStar Opposition at 7.

¹⁵ *Id.*; *see also* EchoStar Application, Technical Annex at 4, Table 2-1 (beam number 8 is the beam directed toward Mexico).

¹⁶ *See, e.g., The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81, Report and Order, 15 FCC Rcd 16127, 16151 ¶ 50 (2000); *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Third Report and Order, 12 FCC Rcd 22310, 22322 ¶ 29 (1997).

¹⁷ *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, IB Docket No. 95-14, Report and Order, 11 FCC Rcd 2429, 2439 ¶¶ 66-67 (1996).

6. In considering EchoStar's application, we must evaluate its interference potential to other DBS permittees and to the radiocommunications systems of other countries. In particular, we must determine whether the EchoStar 7 satellite will be operated in accordance with Appendices S30 and S30A of the International Telecommunication Union ("ITU") Radio Regulations. Because the technical parameters of EchoStar's DBS system vary from those set forth for U.S. assignments in the Region 2 broadcasting satellite service ("BSS") plans and its associated Feeder Link Plan,¹⁸ the Commission must request modification of the Region 2 BSS Plan and its associated Feeder Link Plan for the EchoStar 7 satellite.¹⁹ Annex 1 of Appendices S30 and S30A provide the methodology and criteria for determining whether a proposed satellite system (*i.e.*, a proposed modification to the Plan) might interfere with frequency assignments in accordance with the Region 2 BSS Plan and its associated Feeder Link Plan, other satellite systems, or terrestrial services.²⁰ If the limits in Annex 1 are exceeded, the system must be coordinated with the affected systems or services.

7. In that regard, we remind EchoStar that its satellite operations are not guaranteed protection from interference from systems licensed by other Administrations operating in accordance with the ITU Radio Regulations until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar 7. Further, we condition operation of EchoStar 7 such that, until the Region 2 BSS Plan and its associated Feeder Link Plan are modified to include EchoStar 7's parameters, it shall not cause greater interference than that which would occur from the current USA Plan assignments at 119° W.L. to other BSS or feeder link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations. EchoStar will be expected to provide continuing documentation, as necessary, for either the coordination or agreement-seeking process.²¹

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, that the Application of EchoStar Satellite Corporation for Minor Modification of DBS Authorization, Launch and Operating Authority for EchoStar 7, File Nos. SAT-MOD-20010810-00071 & SAT-A/O-20010810-00073, IS GRANTED, and EchoStar Satellite Corporation IS AUTHORIZED to launch and operate its satellite, EchoStar 7, using channels 1-21 at the

¹⁸ The International Telecommunication Union ("ITU") Radio Regulations divide the world into three Regions. Generally, Region 1 includes Africa, Europe, Northern and Western portions of Asia; Region 2 includes the Americas and Greenland; and Region 3 includes Southern portions of Asia, Australia and the South Pacific. See ITU Radio Regulations Article S5, Section I. Unless referring specifically to the Region 2 BSS Plan and its associated Feeder Link Plan, in the United States the term "DBS" is used interchangeably with "BSS."

¹⁹ Some of these varying parameters include type of emission, size of receive dish antennas and the use of spot beams.

²⁰ See ITU Radio Regulations, Appendices S30 and S30A.

²¹ This includes, but is not limited to, the submission of any information or analyses necessary for completing the Plan modification process. Modifications of the BSS Plans are expected not only to continue, but also to increase, in the future. Accordingly, EchoStar may be required to assist the Commission in future cases in which it must coordinate with or grant agreement to the Administrations of later implemented systems regarding EchoStar's network.

119° W.L. orbit location in accordance with the terms, representations, and technical specifications set forth in its application.

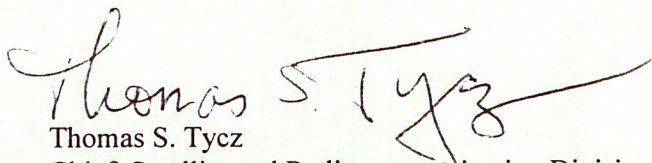
9. IT IS FURTHER ORDERED that the authorization granted in this *Order* is subject to the following conditions: (1) until the International Telecommunication Union ("ITU") Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar 7 and its associated feeder links, this satellite system shall not cause greater interference than that which would occur from the current U.S. assignments in the Region 2 BSS Plan at 119° W.L. to other BSS or feeder link assignments, or other services or satellite systems operating in accordance with the ITU Radio Regulations; and (2) no protection from interference caused by radio stations authorized by other Administrations is guaranteed to EchoStar 7 unless and until Appendices S30 and S30A plan modification procedures are successfully and timely completed.

10. IT IS FURTHER ORDERED that EchoStar Satellite Corporation shall coordinate all transfer orbit Telemetry, Tracking, and Control operations with other potentially affected in-orbit DBS operators.

11. IT IS FURTHER ORDERED that EchoStar Satellite Corporation has 30 days from the date of the release of this *Order and Authorization* to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

12. This *Order and Authorization* is issued pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION


Thomas S. Tycz
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