

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

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In the Matter of )	
EchoStar Satellite Corporation )	<b><u>EXPEDITED CONSIDERATION</u></b>
Application for Authority to Make )	<b><u>REQUESTED</u></b>
Minor Modification of )	File No. 74-SAT-P/L-96;
Direct Broadcast Satellite Authorization )	File No. DBS-88-02;
_____ )	File No. _____

To: The International Bureau

**APPLICATION FOR MINOR MODIFICATION OF DBS AUTHORIZATION**

EchoStar Satellite Corporation (“EchoStar”) hereby submits this application for authority to make certain minor modifications to the above-captioned Direct Broadcast Satellite (“DBS”) authorization. Specifically, EchoStar seeks authorization to relocate the EchoStar 2 satellite from the 119° W.L. orbital location to 148° W.L. and operate the satellite over the eight even-numbered channels that are already licensed to EchoStar at that location. EchoStar has a license for a total of 24 channels at 148° W.L. Another EchoStar satellite, EchoStar 1, has already moved to 148° W.L. and operates over the 16 odd-numbered channels that are licensed to EchoStar at that slot. EchoStar 2 is currently not operational, but rather is positioned at the 119° W.L orbital location as an in-orbit spare. Other EchoStar satellites will continue to use fully the 21 channels assigned to EchoStar at 119° W.L.<sup>1</sup>

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<sup>1</sup> Concurrent with this Application, EchoStar has filed a request for Special Temporary Authority (“STA”) to operate the EchoStar 2 satellite over the 16 even-numbered channels and  
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EchoStar currently operates a DBS system consisting of six DBS satellites located at the 61.5° W.L., 110° W.L., 119° W.L., and 148° W.L. orbital positions, and recently applied for Commission authorization to launch and operate a new spot beam satellite, EchoStar 7, at the 119° W.L. location. With these satellites, EchoStar has the capacity to offer numerous digital video, data and audio channels of programming, including local networks, educational and informational programming, and high-definition television, to more than six million households throughout the United States. The exigencies of the must-carry requirements, however, which commence on January 1, 2002, will create an unprecedented strain on EchoStar's satellite and spectrum resources. As the Commission is aware, EchoStar must carry all qualified broadcast stations in each and every market where EchoStar now offers local network stations and in every new market that EchoStar may want to start serving. These rules necessitate EchoStar activating as much satellite capacity as possible.

Relocating EchoStar 2 will optimize EchoStar's satellite deployment, thereby serving the public interest. EchoStar 2 is not needed at 119° W.L. except as an in-orbit spare. This application will move it from its now "dormant" status to operational status. The instant request will therefore result in the use of currently unused DBS channels at a western orbital location, to the benefit of U.S. consumers. In addition, the move is essential to EchoStar's efforts to provide local broadcast service to as many cities as feasible.

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the unassigned channels at the 148° W.L. orbital location for a period of 180 days while the Commission considers this modification request. The STA was requested to allow EchoStar to immediately address the exigencies of the must-carry requirements, which commence on January 1, 2002 and will create an unprecedented strain on EchoStar's satellite and spectrum resources.

The Technical Annex attached hereto shows that the EchoStar 2 satellite will not cause harmful interference to any authorized user of the DBS spectrum. Indeed, EchoStar 2 and EchoStar 1 are technically identical DBS satellites, and the Commission has already found that EchoStar 1 will not cause harmful interference from the 148° W.L. orbital location.

## I. INTRODUCTION AND BACKGROUND

In 1989, the Commission granted EchoStar and Directsat (a predecessor in interest of EchoStar) conditional permits to provide DBS service from “two or more satellites delivering 11 channels to each half of the United States, or from one or more satellites delivering 11 channels to the continental United States.”<sup>2</sup> In 1992, the Commission assigned 11 channels to EchoStar to provide service from 119° W.L.<sup>3</sup> In 1993, the Commission assigned 10 channels to Directsat, also at 119° W.L., for the same purpose.<sup>4</sup>

EchoStar launched its first satellite, EchoStar 1, to the 119° W.L. orbital location in December 1995,<sup>5</sup> and since May 1996 has provided continuous DBS service to customers throughout the continental United States. Directsat launched its first satellite (now known as EchoStar 2) to the 119° W.L. orbital location in September 1996, which allowed EchoStar, upon

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<sup>2</sup> *Continental Satellite Corporation*, 4 FCC Rcd. 6292, 6300 (1989).

<sup>3</sup> *EchoStar Satellite Corporation*, 7 FCC Rcd. 1765, 1770 (1992). EchoStar was assigned the odd-numbered channels 1-21.

<sup>4</sup> *Direcstet Corporation*, 8 FCC Rcd. 7962, 7964 (1993). Direcstet was assigned the even-numbered channels 2-20 at 119.05° W.L.

<sup>5</sup> *See EchoStar Satellite Corporation*, 11 FCC Rcd. 3015, 3015 (1996).

acquiring Directsat, to integrate the two satellites into an offering of about 125-130 video channels.<sup>6</sup>

EchoStar subsequently deployed two additional satellites, EchoStar 4 and 6, to the 119° W.L. orbital location to join EchoStar 1 and 2, and shifted all programming services provided from 119° W.L. to EchoStar 4 and 6, relegating EchoStar 2 to in-orbit spare status at that orbital location.<sup>7</sup> This shift allowed EchoStar to move EchoStar 1 from 119 ° W.L. to 148° W.L., the location at which EchoStar DBS Corporation acquired 24 channels in a Commission auction in January 1996.<sup>8</sup> (The remaining eight channels at 148° W.L. are unassigned.) EchoStar operates 16 of the 24 channels assigned to it at 148° W.L. using EchoStar 1's sixteen transponders.<sup>9</sup>

As a result, EchoStar currently operates three satellites at the nominal 119° W.L. orbital location: EchoStar 4 at 118.9° W.L. and EchoStar 6 at 119.05° W.L., while EchoStar 2 is located at 119.35° W.L. as an in-orbit spare, where it provides only telemetry, tracking and control functions from its storage orbit location.<sup>10</sup>

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<sup>6</sup> See *Directsat Corporation*, 11 FCC Rcd. 10575, 10577 (1996); see also *Directsat Corporation and EchoStar Communications Corporation, Application for Commission Consent to Transfer of Control*, 10 FCC Rcd. 88 (1995).

<sup>7</sup> See generally *EchoStar Satellite Corporation*, 15 FCC Rcd. 23636 (2000); see also *EchoStar Satellite Corporation, Directsat Corporation, EchoStar DBS Corporation*, 13 FCC Rcd. 8595 (1998).

<sup>8</sup> See *EchoStar DBS Corporation Wins 24 DBS Channels at the 148 Degree Orbital Location With a High Bid of \$52,295,000*, FCC Press Release (Jan. 26, 1996).

<sup>9</sup> See *EchoStar Satellite Corporation, Directsat Corporation, EchoStar DBS Corporation*, 13 FCC Rcd. at 8609.

<sup>10</sup> On August 10, 2000, the Commission granted EchoStar special temporary authority to relocate EchoStar 2 from 119.05° W.L. to 119.35° W.L. See Letter to David K. Moskowitz, Senior Vice President and General Counsel, EchoStar Satellite Corporation, from Thomas S.

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Additionally, as previously noted, EchoStar plans to launch a new “spot beam” satellite, EchoStar 7, to the 119° W.L. orbital location.<sup>11</sup> The EchoStar 7 spot beam (as well as a second planned spot beam satellite, EchoStar 8) is specifically intended to provide limited spectrum reuse and additional localized programming capacity for EchoStar’s existing DBS system. EchoStar 7 will significantly enhance the efficiency of EchoStar’s spectrum use at 119° W.L. compared to the current configuration of satellites located there. Among other things, EchoStar expects the satellite to improve service to Alaska and Hawaii from 119° W.L. compared to the service that is provided (or, in the case of EchoStar 2, can be provided) from the current satellites at 119° W.L.<sup>12</sup>

The proposed relocation of EchoStar 2 is part of a broader effort on EchoStar’s part to comply with the must carry rules. That effort includes the launch of EchoStar 7 and EchoStar 8. Circumstances beyond EchoStar’s control, however, could delay the launch of EchoStar 7. Out of an abundance of caution, EchoStar seeks to realign its fleet to ensure compliance with the must carry rules. Consequently, EchoStar can no longer afford to maintain an in-orbit spare at 119° W.L., and requests authority to move the EchoStar 2 satellite to the 148°

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Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, FCC (dated Aug. 10, 2000). On November 24, 2000, the Commission granted EchoStar permanent authority for EchoStar 2 to remain at 119.35° W.L. *EchoStar Satellite Corporation*, 15 FCC Rcd. at 23639.

<sup>11</sup> See Application of EchoStar Satellite Corporation for Minor Modifications of DBS Authorization, Launch and Operating Authority for EchoStar 7, File Nos. DBS 88-01, DBS 88-02, and SAT-MOD-20010810-00071 (filed Aug.10, 2001).

<sup>12</sup> *Id.* The satellite is equipped with spectrum reuse capabilities for its uplinks as well as downlinks. *Id.*

W.L. orbital location. Because the must carry obligations commence on January 1, 2002, EchoStar respectfully requests expeditious action on this application.

## **II. THE MODIFICATION WILL SERVE THE PUBLIC INTEREST**

### **A. The Modification Will Promote the Efficient Use of Spectrum**

This modification request will promote efficient use of spectrum and is therefore in the public interest. EchoStar 2 is not needed at 119° W.L. except as an in-orbit spare, and is not operational at that location. This proposal will move it from its now “dormant” status to operational status. Thus, granting the modification would further the public interest by facilitating the use of currently unused DBS channels at a western orbital location, to the benefit of U.S. consumers.<sup>13</sup>

### **B. The Modification Will Aid EchoStar’s Effort to Provide Local Broadcast Service to As Many Cities as Possible**

Relocation of EchoStar 2 is essential to EchoStar’s efforts to provide local broadcast service to as many cities as feasible. Under the must-carry scheme, the decision of a satellite carrier to provide even one popular local station in a particular city carries with it a manifold burden on the spectrum available to the carrier – the obligation to carry all qualified

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<sup>13</sup> In connection with its proposal to move EchoStar 2 to 148° W.L., EchoStar also requests that the waiver of the Commission’s geographic service requirements already granted for EchoStar 1’s operations at 148° W.L. be extended to cover the proposed operation of EchoStar 2 from that orbital location. *See* 47 C.F.R. § 100.53 (requiring DBS licensees to serve Alaska and Hawaii from 148° W.L.). As explained in detail below, EchoStar’s proposed modification will not result in a degradation of service to residents of Alaska and Hawaii; those residents will continue to receive the current level of service that is greater than what would be received if EchoStar was forced to serve Alaska and Hawaii from 148° W.L.

stations in that market. *See* 47 C.F.R. § 76.66. This poses a daunting strain on EchoStar's satellite capacity. To meet this need for capacity, EchoStar plans to launch two new satellites, EchoStar 7 and 8, at a cost of roughly a half billion dollars. While the earliest EchoStar 7 will launch is late December of this year, certain factors beyond EchoStar's control could contribute to the delay of this launch, including delays in delivery of the satellite or difficulties in procuring adequate launch insurance. The modification EchoStar seeks here will help it meet its must carry obligation, especially in light of the risk that EchoStar 7's launch may be delayed. Specifically, EchoStar seeks to use the frequencies at 148° W.L. to support DBS services and backhaul capacity allowing the transfer of programming streams between EchoStar's Gilbert, AZ and Cheyenne, WY uplink facilities.<sup>14</sup> The unappealing alternative would be to drop local service in markets where EchoStar currently carries local television stations, something EchoStar hopes to avoid.

### **III. THE PROPOSED OPERATION WILL NOT CAUSE HARMFUL INTERFERENCE**

No entity other than EchoStar has authority to conduct DBS operations from the 148° W.L. slot. Therefore, the requested operational authority will not cause any harmful interference to any authorized user of the spectrum. *See, e.g., In the Matter of Newcomb*

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<sup>14</sup> Backhaul operation is explicitly included in EchoStar's DBS authorizations under the Commission's policy of flexibility in allowing "non-conforming uses" of DBS resources. *See In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd. 9712, 9717-18 (1995).

*Communications, Inc.*, 8 FCC Rcd. 3631, 3633 (1993); *In the Matter of Columbia Communications Corporation*, 11 FCC Rcd. 8639, 8640 (1996).

EchoStar 2 and EchoStar 1 are technically identical DBS satellites, and the Commission has already found that EchoStar 1 will not cause harmful interference from the 148° W.L. orbital location. The attached Technical Annex provides additional evidence in that regard.

As for EchoStar 2's TT&C operations in the extended C-band, the move would, if anything, alleviate any risk of interference, since it would place the satellite in a less congested part of the geostationary arc. In any event, EchoStar 2 uses only a narrow sliver of that spectrum for its TT&C communications, and coordination should be straightforward. EchoStar commits to discontinuing any offending operations upon notification of harmful interference by an authorized user of the spectrum.

EchoStar notes as well that, notwithstanding the freeze imposed by the Commission on new FSS satellite applications seeking authorization to operate in the extended C-band, EchoStar 2's TT&C operations in the extended C-band have been explicitly grandfathered without regard to the satellite's orbital location under the rules adopted by the Commission reallocating that spectrum to terrestrial services. *See In the Matter of Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band*, First Report and Order and Second Notice of Proposed Rulemaking, 15 FCC Rcd. 20488, 20502 (2000) ("Consistent with our regulatory treatment of existing FSS earth stations, [the Commission] . . . will grandfather the sites currently used to provide TT&C operations, including EchoStar's.") (citing *id.* at Appendix F, Tables 3 and 4, grandfathering specific EchoStar earth station locations that communicate with EchoStar 2 to perform TT&C operations). As the grandfathering provisions of the Commission's ruling apply to the sites of the earth stations in



question (Three Peaks, California and Cheyenne, Wyoming), and the instant application seeks no change with respect to the earth stations engaged in performing TT&C operations with EchoStar 2, the freeze on FSS satellite applications seeking authorization to operate in the extended C-band is not implicated here.<sup>15</sup>

#### **IV. REQUEST FOR WAIVER OF THE SECTION 100.53 GEOGRAPHIC SERVICE REQUIREMENTS**

In connection with its request to relocate and operate EchoStar 2 using the eight unused and eight unassigned channels at 148° W.L., EchoStar also requests a waiver of the Commission's geographic service rules requiring DBS licensees to serve Alaska and Hawaii from 148° W.L. should the Commission approve relocation of EchoStar 2 to 148° W.L. There is good cause for the waiver, and it would in fact promote, rather than undermine the policies embodied in the geographic service rule.<sup>16</sup>

In 1998, the Commission granted EchoStar a conditional waiver of the geographic service rules.<sup>17</sup> As a consequence, EchoStar's satellite at 148° W.L., EchoStar 1, is not required

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<sup>15</sup> Although EchoStar is confident that the TT&C operations of EchoStar 2 in the extended C-band are grandfathered without regard to the location of the satellite, out of an abundance of caution, EchoStar has filed with the Commission a still pending petition seeking confirmation of EchoStar's position. *See* EchoStar Satellite Corporation's Petition for Clarification and, if Necessary, Reconsideration of the First Report and Order and Comments to the Second Notice of Proposed Rulemaking, ET Docket No. 98-237, RM-9411 (dated Dec. 18, 2000), 66 Fed. Reg. 16940 (Mar. 28, 2001).

<sup>16</sup> The Commission "may waive any provision of its rules if it determines that good cause has been shown and that a grant of the waiver would not undermine the policies embodied in the rule." *King Broadcasting Company*, 5 FCC Rcd. 3068 (1990); *see also* *EchoStar Satellite Corporation*, 15 FCC Rcd. at 23640 ("The Commission may waive a rule for good cause shown.") (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

<sup>17</sup> *EchoStar Satellite Corporation, Directsat Corporation and EchoStar DBS Corporation*, 13 FCC Rcd. at 8599. It appears that the instant modification request would not be  
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to serve Alaska and Hawaii. The waiver was granted because EchoStar was capable of serving, and undertook to serve, Alaska and Hawaii from the 119° W.L. orbital location instead of 148° W.L., resulting in enhanced service to Alaskan and Hawaiian consumers by making available to them broader program offerings (e.g., EchoStar’s backbone cable and superstation package) than what would be available from the 148° W.L. location.<sup>18</sup> Thus, in Hawaii, EchoStar currently offers its “America’s Top 100” package for the same price as it offers the package in the continental United States (\$9.00 per month for the first year and free installation with the purchase of a DISH Network satellite television system).<sup>19</sup> In Alaska, EchoStar offers its “America’s Top 70” package. Were EchoStar required to provide service to Alaska and Hawaii from the 148° W.L. orbital location, residents of these states would only be able to receive the

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covered under the 1998 waiver, necessitating a separate waiver of the geographic service rules to effectuate EchoStar’s plan to continue serving Alaska and Hawaii primarily from 119° W.L. rather than 148° W.L. Specifically, among the conditions of the 1998 waiver were requirements that: (1) any satellite replacing the EchoStar 1 satellite at 148° W.L. would immediately be subject to the geographic service rules; and (2) EchoStar’s geographic service obligation would remain intact for EchoStar and its affiliates on all other satellites. *Id.* The FCC also noted that the obligations imposed by the geographic service rules “remain in force for [EchoStar’s] 8 assigned channels remaining unused at 148° W.L.” *Id.* Thus, although EchoStar 2 will not be “replacing” EchoStar 1 at 148° W.L., but rather supplementing the provision of service from the 148° W.L. orbital location, because EchoStar’s obligations under the geographic service rules remain intact for all satellites other than EchoStar 1 at 148° W.L., and “remain in force” for EchoStar’s unused channels at 148° W.L., a separate waiver appears to be necessary.

<sup>18</sup> *Id.* (Commission explaining that the 1998 waiver of the geographic service rules would “serve the public interest because it will enable subscribers in Hawaii to receive the same backbone programming as subscribers on the mainland.”). EchoStar started providing its backbone cable and superstation package to residents of Alaska and Hawaii from the 119° W.L. orbital location by means of EchoStar 4. The service was further enhanced when, with the Commission’s approval, EchoStar moved its EchoStar 6 satellite to join EchoStar 4 at the 119° W.L. orbital location. *See EchoStar Satellite Corporation*, 15 FCC Rcd. at 23638.

<sup>19</sup> *See* [www.dishnetwork.com/content/promotions/like9/index.shtml](http://www.dishnetwork.com/content/promotions/like9/index.shtml) (describing EchoStar’s “I Like 9” promotion).

local, niche or other complementary programming available from EchoStar's western orbital locations.

The same benefits and promotion of the policies embodied in the geographic service rules that attended the 1998 waiver exist here.<sup>20</sup> By relocating EchoStar 2, an in-orbit spare, to 148° W.L. from 119° W.L., there will be absolutely no loss or degradation of service to residents of Alaska or Hawaii. As the Commission is aware, EchoStar 2 is covered by the Commission's geographic "grandfathering" provision: it does not have to, and is not equipped to, serve Hawaii or Alaska from 119° W.L.<sup>21</sup> As with the "swap" of EchoStar 4 and EchoStar 1, EchoStar now proposes to substitute at the 119° W.L. orbital location a state-of-the-art satellite that can provide high quality service to Alaska and Hawaii for an old satellite that cannot provide such service. Therefore, like the swap of EchoStar 4 and 1, this proposed aggregate satellite redeployment will: improve service to Hawaii and Alaska (through the launch of EchoStar 7 to 119° W.L.); not cause any prejudice to consumers in these two states (since EchoStar 2 is now parked at 119° W.L. and could not serve Alaska and Hawaii even if it operated from 119° W.L.); and allow the use of currently unused spectrum at 148° W.L. (through the relocation of EchoStar 2 to that slot).

In sum, by extending the conditional waiver to the remaining channels at 148° W.L., the Commission will be promoting the policies embodied in the geographic service rules

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<sup>20</sup> See note 18, *supra* (Commission explaining that the 1998 waiver of the geographic service rules would "serve the public interest because it will enable subscribers in Hawaii to receive the same backbone programming as subscribers on the mainland.").

<sup>21</sup> See 47 C.F.R. § 100.53 (the geographic service rules only apply to "those acquiring DBS authorizations after January 19, 1996," and only where service to Alaska and Hawaii "is technically feasible from the acquired orbital location."). As explained above, EchoStar 2 is not capable of serving Alaska and Hawaii from 119° W.L.

and approving a satellite redeployment that achieves the use of unused spectrum without taking service away from anyone.

## **V. SECTION 304 WAIVER**

In accordance with Section 304 of the Communications Act of 1934, 47 U.S.C. § 304, EchoStar hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum because of the previous use of the same, whether by license or otherwise.

## **VI. CONCLUSION**

For the foregoing reasons, EchoStar respectfully requests a modification of its license authorizing the relocation of the EchoStar 2 satellite from the 119° W.L. orbital location to 148° W.L. and operation of the satellite at 148° W.L.

Respectfully submitted,

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