

Karen Washington

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From: Mah, Daniel [dmah@steptoe.com]
Sent: Friday, December 08, 2006 8:02 PM
To: IBSecretary
Cc: William Calton
Subject: Submission for IB File Nos. SAT-LOA-20030827-00177, SAT-MOD-20041008-00196, SAT-MOD-20041208-00218; Call Sign S2490
Importance: High
Attachments: 117W Surrender.pdf

Please find attached a letter submitted on behalf of EchoStar Satellite Operating Corporation for the above-referenced file numbers.

If you have any questions about this filing, please contact me on 202-429-6414.

Regards,
Daniel

<<117W Surrender.pdf>>

Daniel C.H. Mah
Steptoe & Johnson LLP
1330 Connecticut Avenue NW
Washington DC 20036
(202) 429-6414

12/11/2006

STEP TOE & JOHNSON LLP
ATTORNEYS AT LAW

Pantelis Michalopoulos
202.429.6494
pmichalo@stepToe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
stepToe.com

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December 8, 2006

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

Re: EchoStar-117W Ka-band Authorization
File Nos. SAT-LOA-20030827-00177, SAT-MOD-20041008-00196, SAT-MOD-20041208-
00218; Call Sign S2490; Withdrawal of Authorization and Request for Waiver

Dear Ms. Dortch,

EchoStar Satellite L.L.C. ("EchoStar") hereby surrenders its Ka-band authorization for the 117° W.L. orbital location. In addition, EchoStar respectfully requests that the Commission grant an unconditional release of the performance bond submitted for that authorization¹ and, to the extent required, a waiver in light of the Commission's statement that such bonds "will be payable if the

¹ See Letter from Pantelis Michalopoulos, Counsel to EchoStar to Marlene H. Dortch, Secretary, FCC (Jan. 7, 2004) (submitting \$5 million performance bond for the proposed EchoStar-117W satellite); Rider to Bond (dated Sept. 20, 2004) (submitting bond rider to reduce bond amount to \$3 million). See also Letter from Pantelis Michalopoulos, Counsel to EchoStar to Marlene H. Dortch, Secretary, FCC (Apr. 12, 2004) (reducing bond amount to \$2.25 million following contract execution milestone); Letter from Pantelis Michalopoulos, Counsel to EchoStar to Marlene H. Dortch, Secretary, FCC (Mar. 24, 2006) (reducing bond amount to \$1.5 million following the Critical Design Review milestone).

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licensee surrenders its license voluntarily before a milestone date.”² EchoStar has decided to surrender its license for good and legitimate cause – the loss of international date priority for the Ka-band at 117° W.L.³ In light of that loss, continuation of the project would have meant construction of a satellite whose ability to serve the United States from the licensed slot would be compromised at best. That would not serve the public interest.

The purpose of the bond is to deter speculation and warehousing of valuable spectrum and orbital resources. This purpose would not be served by a forfeiture of the bond in the present case. EchoStar has diligently complied with all applicable milestones for the construction of the proposed satellite under the Commission’s rules and the conditions of its authorization.⁴ It has even taken extraordinary steps to preserve the United States’ ITU date priority for the Ka-band frequencies at that location by bringing those frequencies into use with the AMC-15 satellite from January through March 2005.⁵ Thus, there has been no speculation or warehousing. In fact, very few other licensees would have been able to do as much as EchoStar to bring this slot into use.

It has become apparent, however, that the United States is almost certain to lose its ITU priority for the Ka-band frequencies at 117° W.L. because the use of those frequencies has been suspended and EchoStar is unlikely to be able to bring them back into regular use within two years of such suspension, as required by the ITU radio regulations.⁶ As a result, the ability of EchoStar to operate on the Ka-band at the 117° W.L. orbital location will shortly become subject to the nearby satellite networks of other administrations with ITU priority. This would likely be true for any other U.S. Ka-band licensee at this orbital location, as well. Under such circumstances, if EchoStar did not surrender its license, it would have to continue constructing a satellite that might not be able to provide robust service to a large part of the nation because of the slot’s demoted U.S. priority. In sum, it would

² *Amendment of Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, at ¶ 171 (2003).

³ 47 C.F.R. § 1.3 (permitting waiver of the Commission’s rules “for good cause shown.”).

⁴ See Public Notice, DA 05-1000 (rel. Apr. 1, 2005) (finding that EchoStar had met the contract execution milestone for this authorization); Public Notice, DA 06-567 (rel. Mar. 10, 2006) (finding that EchoStar had met the Critical Design Review milestone for this authorization).

⁵ See Stamp Grant, SAT-STA-20041130-00214 (granted Dec. 10, 2003).

⁶ See ITU Radio Regulations § 11.49 (“Where the use of a recorded assignment to a space station is suspended for a period not exceeding eighteen months, the notifying administration shall, as soon as possible, inform the Bureau of the date on which such use was suspended and the date on which the assignment is to be brought back into regular use. This latter date shall not exceed two years from the date of suspension.”).

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be inappropriate to penalize EchoStar for trying (albeit without success) to preserve and bring into use the Ka-band frequencies at 117° W.L. on behalf of the United States, and for forthrightly surrendering the license when it is virtually certain that ITU date priority rights will be lost.

For these reasons, the Commission should grant an unconditional release of the performance bond submitted for the EchoStar-117W authorization and a waiver to the extent required to permit such release.

Please contact the undersigned if you have any questions regarding this letter.

Respectfully submitted,



Pantelis Michalopoulos
Counsel for EchoStar Satellite Operating Corp.

cc:

Robert Nelson, International Bureau