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JUN 14 2005

Federal Communications Commission
Office of Secretary

ORIGINAL

June 14, 2005

VIA HAND DELIVERY

Ms. Marlene Dortch
Secretary

Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

Received

JUN 23 2005

Policy Branch
International Bureau

Re: Notice of Oral *Ex Parte* Presentation – File Nos. SAT-STA-20050321-00068, SAT-MOD-20050513-00103, SES-MFS-20050527-00662

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, EchoStar Satellite L.L.C. ("EchoStar") submits this letter to report that on June 13, 2005, representatives of EchoStar and SES Americom met with the following International Bureau staff: Andrea Kelly, Gardner Foster, Chip Fleming, Rockie Patterson, Roderick Porter, Thomas Tycz, Karl Kensinger, John Martin, Mark Young, Cindy Spiers, and Hans Zeller.

At this meeting, EchoStar discussed: (1) additional information about the service to the United States and Mexico that EchoStar proposes to provide from the 77° W.L. orbital location; (2) the willingness of EchoStar to submit the EchoStar 4 satellite to U.S. jurisdiction if the satellite were to be relocated out of the 77° W.L. orbital location in the future; and (3) some of the arguments made in the attached PowerPoint presentation.

In addition, the undersigned had a telephone conversation with Roderick Porter and Thomas Tycz, later in the afternoon. On the call, EchoStar discussed the issues mentioned above. In addition, EchoStar reiterated that no service to anyone will be lost as a result of the departure of EchoStar 4 from 157° W.L., and no service to Alaska or Hawaii will be lost as a result of the departure. The services provided by EchoStar 4 are duplicative of programming available from 148° W.L., and the satellite operates subject to a waiver of the requirement to serve Alaska and Hawaii. EchoStar also explained that EchoStar 4 has limited operational capability.

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In accordance with Section 1.1206(b)(2) of the Commission's Rules, EchoStar is submitting the original and one copy of this letter and the attached PowerPoint presentation.

Respectfully submitted,



Pantelis Michalopoulos
Counsel for EchoStar Satellite L.L.C.

cc: Andrea Kelly
Gardner Foster
Chip Fleming
Rockie Patterson
Roderick Porter
Thomas S. Tycz
Karl Kensinger
John Martin
Mark Young
Cindy Spiers
Hans Zeller



COMMISSION JUNE 3 Order

- “EchoStar has not stated a sufficient public interest reason.” ¶ 6
- EchoStar 4 is unlike DIRECTV 3, which would provide “for immediate improvement in the quality and reliability of an existing service provided to direct-to-home subscribers in Canada.” ¶ 7
- Allowing a foreign country to bring into use an orbital slot was the principal benefit, not an “incidental benefit” as with DIRECTV 5. ¶ 8
- Potential benefits from service to U.S. “at best, are purely speculative.” ¶ 8



The Order Should Be Reconsidered

- The Order has been overtaken by subsequent developments.
- The Order was legally and factually incorrect.



The Order has been Overtaken by Subsequent Developments

- Mexico has expressed authoritatively the Mexican national interest in a June 10 letter to Chairman Martin at the highest level and in the strongest possible terms.
- EchoStar has decided it is willing and able to serve the U.S. too.



The Mexican Public Interest

- The June 10 letter eliminates the distinction between DIRECTV 3 and EchoStar 4 cited by the Commission.
- On the FCC's own standard, this is a stronger case for approval than DIRECTV 3.
- In the DIRECTV 3 case, the FCC credited assertions of private companies about the Canadian national interest.
- Here, it has an expression of the Mexican interest by the best expert – the Mexican Government.



The Mexican Public Interest (cont'd)

- Move of EchoStar 4 will help introduce a second DTH provider and promote the availability of digital services to Mexican schools and libraries.
- Mexico stresses the prospect of service to the U.S. from the slot.
- Unlike Canada, Mexico has a bilateral DTH agreement with the U.S.



Service to the U.S.

- EchoStar's decision to provide service to the U.S. eliminates the distinction with the DIRECTV 5 case.
- The Bureau could reconsider its decision on either of these two developments (benefits to Mexico or service to the U.S.).

The June 3 Order Was Incorrect

- The Commission does not have authority to evaluate what a satellite will be doing at a foreign orbital slot
 - “For purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communications service” Section 1 of the Communications Act, 47 U.S.C. § 151.
 - “While the Commission generally does not consider harms resulting from a transaction occurring outside the United States in its public interest analysis of a transaction unless the transaction directly impacts a relevant domestic market, nothing in relevant statutory or case law would prevent the Commission from considering the conduct of the Applicants in foreign jurisdictions to determine the likelihood of similar future conduct in the United States.” *General Motors Corporation, et al.*, 19 FCC Rcd 473, 602, ¶ 297 (2004).
 - “We find that commenters have failed to provide persuasive evidence as to why the Latin America MVPD market is relevant to our consideration of the harms resulting from the proposed transaction. As the Applicants indicate, the Commission generally does not consider harms resulting from a transaction occurring outside the United States in our public interest analysis of a transaction, unless the transaction directly impacts a relevant United States market.” *Id.* at 605, ¶ 303.



This analysis does not change because a U.S. company or licensee will still own the spacecraft

- If that were so, the Commission's jurisdiction would stretch beyond all conceivable boundaries.
- The Commission would have jurisdiction over Intelsat's Ka-band satellites licensed by the U.K.
- The Commission would have jurisdiction over SES Americom's AAP-1 satellite at 108.2E.
- The Commission would have jurisdiction over PanAmSat's Paksat-1/HGS-3 satellite at 38E and various Ka-band satellites licensed by Australia.
- The Commission would have jurisdiction over DIRECTV 3 at 82W.