

subsequent events have overtaken the Bureau's *June 3 Order*² and show amply that the relocation of EchoStar 4 to the 77° W.L. orbital location is in the public interest. The Bureau therefore does not need to reach any of the legal issues raised in the EchoStar Petition.

In short, EchoStar assures the Bureau that:

- Not one EchoStar customer will lose programming because of the relocation of the satellite.
- The move will not result in any loss of service for Alaska or Hawaii as EchoStar has a waiver of the requirement of serving Alaska and Hawaii from EchoStar 4 at 157° W.L.
- EchoStar can and will provide DTH service to U.S. consumers in southern states.
- EchoStar is fully willing to submit the satellite to U.S. licensing for any further operations other than at 77° W.L.
- The EchoStar 4 satellite can and will provide DTH services to the Mexican public, including to schools and libraries.

EchoStar also incorporates by reference the June 10, 2004 letter to Chairman Martin from Mexico's Undersecretary of Communications and the President of COFETEL detailing the benefits from the relocation of EchoStar 4 to serve Mexico.³ These facts make clear that there is no distinction of decisional significance between this case and the move of DIRECTV 3 to

² See *In the Matter of EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations during the Relocation of EchoStar 4 to the 77° W.L. Orbital Location; Application for Modification of Direct Broadcast Satellite Authorization to Permit Long-Term Cessation of Operations on Three DBS Channels at the 157° W.L. Orbital Location; Application for Modification of Earth Station Authorization to add the EchoStar 4 Satellite at 77° W.L. as a Point of Communication*, DA 05-1581 (rel. June 3, 2005) ("*June 3 Order*").

³ See Letter from Jorge Alvarez Hoth, Subsecretario de Comunicaciones, SCT and Jorge Arellano Martinez, Presidente, COFETEL to Kevin J. Martin, Chairman, FCC (Jun. 9, 2005) ("*Mexico Letter*").

82° W.L.⁴ If anything, the benefits for Mexican consumers here are much more convincingly documented than the benefits for the Canadian public that formed the basis for the *DIRECTV 3 Order*. In *DIRECTV 3*, the Bureau had credited assertions by private companies about the Canadian public interest benefits, but here the proof is presented by no less an authority on the Mexican public interest than the Mexican administration.

No EchoStar Customer Will Lose Service as a Result of the Move of EchoStar 4 from 157° W.L. to 77° W.L. As a threshold matter, EchoStar reiterates that none of its customers will lose service by the removal of EchoStar 4 from 157° W.L. This is so for the following reason: the programming that is being carried on EchoStar 4 at 157° W.L. is totally duplicative of programming available from the EchoStar 1 and EchoStar 2 satellites at 148° W.L.

No Service to Alaska or Hawaii Will Be Lost As a Result of the Move. Furthermore, EchoStar emphasizes that no service to Alaska and Hawaii will be affected as a result of the move of the EchoStar 4 satellite. While EchoStar 4 was originally configured to provide service to Alaska and Hawaii from the 119° W.L. slot, when questions regarding satellite health and other issues led EchoStar to decide to move EchoStar 4 to 157° W.L., EchoStar requested and received a waiver of the requirement to serve Alaska and Hawaii from that satellite at that location.⁵ Furthermore, any locations in these States that might nevertheless be able to receive service from 157° W.L. would have at least the same ability to receive service from EchoStar 1 or EchoStar 2 at 148° W.L.⁶ In sum, since programming on EchoStar 4 duplicates programming

⁴ See *DIRECTV, Inc.*, Order and Authorization, 19 FCC Rcd 11055 (2004) (“*DIRECTV 3 Order*”)

⁵ See *EchoStar Satellite L.L.C.*, Memorandum Opinion and Order, 19 FCC Rcd 6075, at ¶ 8 (2004) (“*EchoStar 4 Modification Order*”).

⁶ EchoStar 1 and EchoStar 2 at 148° W.L. also operate under a waiver of the requirement to serve Alaska and Hawaii. See *EchoStar Satellite L.L.C.*, Order and Authorization, 18 FCC

available from the 148° W.L. orbital location anyway, no service to Alaska and Hawaii will be lost, even setting aside the technical difficulties that led EchoStar to request a waiver of the geographic service requirement for EchoStar 4.

Relocation of the EchoStar 4 Satellite Will Not Prejudice EchoStar's Ability to Serve the U.S. Over the Other 29 DBS Channels at 157° W.L. to be Licensed to EchoStar. As EchoStar has previously apprised the Commission, EchoStar 4 is only capable of operating on a certain combination of transponders simultaneously primarily due to the loss of most of its traveling wave tube amplifiers ("TWTAs").⁷ While reduced power may allow EchoStar to operate on up to six simultaneous transponders, the capacity on the satellite remains very limited. In other words, EchoStar 4 does not have any meaningful ability to provide DBS service from 157° W.L. using the remaining 29 channels that EchoStar won in Auction No. 52.⁸ Therefore, the Bureau need not consider any theoretical loss of service under the license EchoStar has requested for the 29 DBS channels at 157° W.L. As EchoStar explained when it filed its application for the 29 DBS channels at 157° W.L., a different satellite is required to fully utilize those channels, and EchoStar has proposed just such a satellite.⁹

Rcd 7886, 7892 ¶ 15 (2003) (granting a waiver of geographic service requirements for EchoStar 2); *EchoStar Satellite L.L.C.*, Memorandum Opinion and Order, 13 FCC Rcd 8595, 8599 ¶ 8 (1998) (same for EchoStar 1).

⁷ See Confidential Letter from Pantelis Michalopoulos, Counsel for EchoStar to Marlene H. Dortch, Secretary, FCC at Attachment 3 (May 13, 2005) ("Confidential May 13 Letter") ("To date, EchoStar IV has had 38 TWTAs fail leaving 6 non-boosted (or 3 boosted) transponders available for service. This means that EchoStar 4 can operate on certain combinations of channels across all 32 BSS channels."). See also EchoStar Modification Order at ¶ 7 (modifying the EchoStar 4 license at 157° W.L. to assign a different combination of 3 channels).

⁸ See *EchoStar Satellite L.L.C.*, SAT-LOA-20040917-00184, Call Sign 2645 (filed Sept. 17, 2004) (pending application).

⁹ *Id.*

EchoStar Will Provide Service to the United States from EchoStar 4 at 77° W.L.

EchoStar can and will serve consumers located in certain southern U.S. states from the 77° W.L. orbital location. Specifically, because of the Mexican coverage requirements set forth in the QuetzSat concession, the EchoStar 4 satellite will not have full coverage of the continental United States. Importantly, however, as shown by the contours submitted by EchoStar, EchoStar 4 will cover large areas in several southern States.¹⁰ The additional capacity into the United States from 77° W.L. will be used to provide augmented coverage to markets with significant Spanish-speaking populations in portions of CONUS where practicable. EchoStar is a pioneer and has a proven record in providing ethnic programming packages to underserved communities in the United States and will continue to do so from EchoStar 4 at the 77° W.L. orbital location by providing primarily Spanish language programming services over that satellite that are popular to both Mexican consumers and the burgeoning Hispanic populations in the southern United States.

EchoStar Will Provide Service to Mexico From EchoStar 4 at 77° W.L. The EchoStar 4 satellite will also be used to provide direct-to-home (“DTH”) service to consumers in Mexico. EchoStar will begin service immediately upon receipt of a DTH concession by QuetzSat Directo, an affiliate of the Mexican BSS concession holder, QuetzSat, S. de R.L. de C.V. EchoStar has been assured that such a concession will be received very soon. Moreover, as representatives of the Mexican government have recently stated to the Chairman, the relocation of the EchoStar 4 satellite at the 77° W.L. orbital position will allow the Mexican Government to improve the availability and access to the general population of digital services throughout Mexico, including education centers, libraries, health centers (among others) as part of the e-Mexico National

¹⁰ See Letter from Pantelis Michalopoulos, Counsel for EchoStar to Marlene H. Dortch, Secretary, FCC, at Attachment A (May 10, 2005).

System, as well as other national social coverage programs.”¹¹ The Mexican Government also added that the e-Mexico program and the universal availability of digital services are very important public policy goals of the Mexican Government.¹² As noted above, EchoStar will primarily be providing Spanish language programming over EchoStar 4 at 77° W.L.

EchoStar Will Submit the EchoStar 4 Satellite to Licensing by the Commission If the Satellite Were to Leave 77° W.L. EchoStar wishes to update the factual record in one further respect. The copy of the EchoStar-SES agreement previously submitted in response to questions from the International Bureau indicated that the relocation of the EchoStar 4 satellite away from 77° W.L. to another orbital location would be “subject to the prior approval of the Governmental Entity to which that orbital location is allotted by the ITU.”¹³ However, EchoStar notes that in the exchange of letters between the U.S. and Canada regarding the relocation of the DIRECTV 5 satellite to 72.5° W.L., an understanding was reached whereby “[a]ny operations of the satellite, other than at the 72.5° W.L. orbital location, will be subject to licensing by the FCC”¹⁴ Accordingly, EchoStar clarifies that it will subject EchoStar 4 to licensing by the Commission for any operations other than at 77° W.L. EchoStar and SES plan to amend their agreement to incorporate that clarification.

¹¹ See Mexico Letter at 2.

¹² *Id.*

¹³ See Letter from Pantelis Michalopoulos, Counsel for EchoStar to Marlene H. Dortch, Secretary, FCC at Attachment 1 (Article 9.D) (May 13, 2005).

¹⁴ See *DIRECTV Enterprises, LLC*, DA 04-2526, Order and Authorization, File Nos. SAT-STA-20040107-00002, SES-LFS-20040112-00023, at Annex A (p. 2) (rel. Aug. 13, 2004).

For the reasons stated in the EchoStar Petition as supplemented herein, EchoStar respectfully requests that the Bureau immediately reconsider the *June 3 Order* and grant EchoStar's request to move EchoStar 4 to the 77° W.L. orbital location.¹⁵

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June 14, 2005

¹⁵ The Bureau should also reconsider its associated dismissals of the related EchoStar applications and grant them as well.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June 2005, a copy of the foregoing was

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