

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

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In the Matter of:)	
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DISH OPERATING L.L.C.)	File No. SAT-MOD-2009_____-_____
)	File No. SAT-MOD-20090430-00048
Application for Authority Under Section)	File No. SAT-A/O-20081003-00215
25.161(c) to Suspend Operations for More)	
Than 90 Days on EchoStar 5 at the 147.925°)	Call Sign S2658
W.L. Orbital Location)	
)	

**APPLICATION FOR AUTHORITY TO SUSPEND OPERATIONS
FOR MORE THAN 90 DAYS**

Pursuant to Sections 25.117 and 25.161(c) of the Commission’s Rules, 47 C.F.R. §§ 25.117, 25.161(c), DISH Operating L.L.C. (“DISH”)¹ requests authority under Section 25.161(c) of the Commission’s Rules to allow DISH to suspend operations on the licensed Direct Broadcast Satellite (“DBS”) frequencies at the nominal 148° W.L. orbital location for more than 90 days, until it can free up and relocate a suitable satellite, EchoStar 8, to replace the EchoStar 5 satellite.

DISH has a long history of using the 148° W.L. orbital location. Of the 32 DBS frequencies available at 148° W.L., DISH’s predecessor won 24 of them in the 1996 DBS auction, and was assigned the remaining 8 in 2003. DISH began using the slot in 2000, first with EchoStar 1 (now moved to another location), then with a combination of EchoStar 1 and 2. In

¹ On August 11, 2009, EchoStar Satellite Operating L.L.C. changed its name to DISH Operating L.L.C. See Letter from Pantelis Michalopoulos, Counsel for DISH Operating L.L.C., to Marlene H. Dortch, Secretary, FCC (Sept. 9, 2009).

July 2008, however, EchoStar 2 suffered an unexpected in-orbit failure. DISH quickly developed a plan to restore the slot to full service: it redeployed another satellite, EchoStar 5, to replace both the departed EchoStar 1 and lost EchoStar 2 satellites. That move was undertaken soon after EchoStar 5 was freed up following the launch of the Ciel 2 satellite to 129° W.L. In July 2009, however, DISH had to de-orbit that satellite in turn because DISH determined that the satellite had insufficient fuel to continue operating.²

DISH plans a similar response to this second mishap. Specifically, DISH plans to relocate the EchoStar 8 satellite to the 148° W.L. orbital slot upon the launch of QuetzSat-1, currently scheduled for 2011. The requested authority will serve the public interest because it will allow DISH to bring the 32 channels available at 148° W.L. back into service. Conversely, without the requested authority, these channels would likely lie fallow for the foreseeable future.

I. BACKGROUND

The Commission auctioned 24 of the 32 DBS frequencies available at 148° W.L. (1-31 odd, 2-16 even) in 1996. DISH's predecessor, EchoStar DBS Corporation ("EchoStar DBS"), submitted the winning bid of over \$52 million for these channels.³ As a result, EchoStar DBS received authority to operate these channels at 148° W.L. on December 20, 1996.⁴ On April 27,

² The circumstances surrounding EchoStar 5's move to 148° W.L. and its de-orbiting are detailed in the request for special temporary authority filed by DISH to obtain de-orbiting approval. *See* File No. SAT-STA-20090729-00078 (granted July 31, 2009) (requesting special temporary authority to de-orbit EchoStar 5).

³ Public Notice, FCC Announces it is Ready To Grant a Direct Broadcast Satellite Authorization to EchoStar DBS Corporation, 11 FCC Rcd. 22489 (1996).

⁴ *Application of EchoStar DBS Corporation for Authority to Construct, Launch and Operate a Direct Broadcast Satellite System at 148° W.L.*, Order, 12 FCC Rcd. 11946 (1996).

1998, the Commission authorized DISH to relocate and operate the EchoStar 1 satellite at 148° W.L. on channels 1-31 (odd).⁵ EchoStar 1 began its licensed operations on those channels at 148° W.L. on December 15, 2000. On December 21, 2001, the Commission granted EchoStar STA to operate EchoStar 2 on channels 2-16 (even) at that slot,⁶ and granted permanent authority to operate on these channels on April 23, 2003.⁷ On May 7, 2003, the Commission granted EchoStar a permanent authorization to operate on the remaining channels 18-32 (even) using EchoStar 2 at 148° W.L.⁸

On July 14, 2008, EchoStar 2 suffered a catastrophic loss, necessitating a redeployment of DISH's fleet to resume full utilization of the spectrum at 148° W.L. As a result, EchoStar 5 was relocated from 129° W.L. to 148° W.L. to replace the EchoStar 2 satellite.⁹ Subsequent to EchoStar 5 arriving at the nominal 148° W.L. orbital location, DISH began relocating the EchoStar 1 satellite to 77.15° W.L. following Commission grant of a STA application on June 12, 2009.¹⁰

⁵ *EchoStar Satellite Corporation, Directsat Corporation, EchoStar DBS Corporation, Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, Launch, and Operational Authority*, Memorandum Opinion and Order, 13 FCC Rcd. 8595 (1998).

⁶ EchoStar began operation on the even-numbered channels on December 21, 2001 pursuant to STA. For a description of the STAs granted with respect to EchoStar 2 at 148° W.L., see *EchoStar Satellite Corporation, Application for Authority to Make Minor Modification of Direct Broadcast Satellite*, Order and Authorization, 18 FCC Rcd. 7886, ¶ 5, n.7 (2003).

⁷ *Id.*

⁸ *EchoStar Satellite Corporation For Assignment of Direct Broadcast Satellite Orbital Position and Channels*, Order, 18 FCC Rcd. 9396 (2003).

⁹ File No. SAT-A/O-20081003-00215 (granted Feb. 3, 2009).

¹⁰ File No. SAT-STA-20090130-00013 (granted June 12, 2009).

At the end of July 2009, DISH discovered a modeling discrepancy during a propellant consumption safety test that had caused DISH to overestimate the amount of fuel remaining on EchoStar 5.¹¹ DISH concluded that the satellite had reached the end of its useful life and received special temporary authority to de-orbit the EchoStar 5 satellite from 148° W.L.¹² DISH de-orbited the satellite on or after August 4, 2009. The next available satellite suitable for service – not earmarked for other service – is the EchoStar 8 satellite currently located at 77° W.L.

II. THERE IS GOOD CAUSE FOR GRANTING DISH “SPECIFIC AUTHORITY” TO RETAIN ITS AUTHORIZATION UNDER SECTION 25.161(c)

While Section 25.161(c) of the Commission’s Rules provides that a license will automatically terminate upon “removal or modification of the facilities which renders the station not operational for more than 90 days,” it allows for a license to continue if “specific authority is requested.”¹³ DISH hereby requests such authority until it resumes operations over the 32 DBS channels at the 148° W.L. orbital location using the EchoStar 8 satellite, or another satellite in DISH’s fleet if one were to become available.

Section 25.161(c) is “intended to avoid unacceptable lapses in service to customers and to prevent warehousing of scarce orbit and spectrum resources.”¹⁴ DISH’s current situation does not give rise to the concerns underlying the general rule. The temporary suspension of operations is not an “unacceptable lapse in service to customers” because DISH has transitioned

¹¹ File No. SAT-STA-20090729-00078 (granted July 31, 2009).

¹² *Id.*

¹³ 47 C.F.R. § 25.161(c).

¹⁴ *SES Americom, Inc., Application for Modification of AMC-16 Fixed Satellite Space Station License*, Memorandum Opinion and Order, 21 FCC Rcd. 14785, ¶ 11 (2006) (“*SES Extension Order*”).

all customers receiving service from that orbital location to other satellites, including Ciel 2 at 129° W.L., avoiding any service disruptions. In addition, the suspension of operations was caused by the successive loss of two satellites, and does not detract from DISH's historically demonstrated diligence in exploiting this spectrum resource and rapidly responding to the satellite losses.

Granting DISH's request would not offend the Commission's anti-warehousing policy. DISH has not been hoarding the DBS spectrum at 148° W.L. from others. Rather, it has been providing service from the orbital slot since December 2000 except for brief instances caused by the satellite losses. Furthermore, no other party has expressed an interest in the DBS spectrum at 148° W.L.

The Bureau has previously found specific authority under Section 25.161(c) to be in the public interest. On February 3, 2009, after the sudden failure of the EchoStar 2 satellite, the Bureau waived the Commission's rule to allow DISH to suspend operations on DBS channels 2-32 (even) at the 148° W.L. orbital location because the satellite "experienced an in-orbit failure on July 14, 2008 and was no longer operating."¹⁵ The Bureau explained that it was granting a waiver "because EchoStar 5's use of these channels promptly restores service after the unexpected failure of an in-orbit satellite and eliminates concerns over warehousing of satellite spectrum."¹⁶

In a similar situation, the Bureau waived Section 25.161(c) to allow SES Americom, Inc. ("SES"), to retain its Ka-band authorization at the 85° W.L. orbital location so it could continue

¹⁵ *Stamp Grant*, File No. SAT-MOD-20080825-00158 (granted Feb. 3, 2009).

¹⁶ *Id.* at 1-2.

to operate the AMC-16 satellite at 118.7° W.L. prior to the launch of the Anik F3 satellite.¹⁷ The Bureau subsequently extended the waiver for an additional seven months when the launch of Anik F3 was delayed.¹⁸ In granting the extension, the Bureau found that requiring SES to move AMC-16 back to 85° W.L. before Anik F3 was launched would actually result in a lapse in service at 118.7° W.L., while no customer at 85° W.L. would be harmed because Ka-band service had never been offered commercially from that location.¹⁹ Furthermore, SES had plans for re-initiating Ka-band service at 85° W.L., but those plans had been waylaid only by the unforeseen difficulties and delay in the Anik F3 launch.²⁰

The situation in this instance presents a similar if not more compelling justification for allowing DISH to hold a continued authorization for the 32 DBS channels at 148° W.L. As was the case when EchoStar 5 replaced EchoStar 2, DISH has developed a plan to redeploy its satellite fleet that will permit another satellite to replace EchoStar 5 and put the channels back into use. Finalization of this plan must await the successful launch of an additional satellite that will free up satellite capacity and permit a satellite's redeployment. DISH has determined that the successful launch of the QuetzSat 1 satellite, scheduled for 2011, will permit this. At that time, DISH, in conjunction with EchoStar, plans to relocate the EchoStar 8 satellite and restore

¹⁷ See *SES Americom, Inc.*, Order and Authorization, 21 FCC Rcd 3430 ¶ 9 (Int'l Bureau 2006) (“SES Americom Order”).

¹⁸ *SES Americom, Inc.*, Application for Modification of AMC-16 Fixed Satellite Space Station License, Memorandum Opinion and Order, 21 FCC Rcd. 14785, ¶¶ 15-16 (2006) (“SES Extension Order”).

¹⁹ *Id.* ¶ 11.

²⁰ *Id.* ¶ 13.

service at 148° W.L.²¹ Therefore, granting DISH's request will ensure that these channels are promptly restored to service after the unexpected failure of an in-orbit satellite.

As was the case with SES, requiring DISH to move a satellite to 148° W.L. immediately would actually result in a lapse in service at another orbital location. As noted above, DISH has transitioned all customers receiving service from EchoStar 5 to other DISH satellites, avoiding any service disruptions. Like SES, DISH had definite plans for re-initiating service at 148° W.L., and those plans were waylaid only by the premature failure of EchoStar 5.

III. CONCLUSION

Grant of the requested authority is in the public interest, as it will allow DISH to bring the spectrum back into use as soon as possible. Conversely, denial of this requested authority will almost certainly result in the spectrum lying unused for the foreseeable future. For the foregoing reasons, the Bureau should promptly grant the above-captioned application.

Respectfully submitted,

/s/

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²¹ DISH does not own EchoStar 8; rather, it leases capacity on the satellite from EchoStar Corporation. The satellite will be under DISH's control while it is at 148° W.L.