



same conditions that now apply to operations for EchoStar 15 at channels 23 and 24. EchoStar asks that this swap and STA become effective upon EchoStar 16's successful launch, operational check-out, and move to 61.5° W.L. later this year.

## **I. INTRODUCTION AND BACKGROUND**

EchoStar uses its five owned and five leased in-orbit satellites, among other things, to provide DBS and Fixed-Satellite Service capacity to its customers, including DISH Network L.L.C. ("DISH Network"), which is the operator of the DISH Network television service, the nation's third largest subscription television service with approximately 14 million subscribers.

EchoStar currently operates over all 32 DBS channels at the 61.5° W.L. orbital location through a permanent authorization for 30 of the 32 channels and under STA for the remaining two channels. Specifically, EchoStar is licensed to operate over channels 1-22 and 25-32. Originally, channels 2-22 (even) were licensed to Direct Broadcasting Satellite Corporation.<sup>1</sup> Those 11 channels were then assigned to EchoStar's predecessor-in-interest.<sup>2</sup> Channels 1-21 (odd) were assigned to EchoStar by Rainbow DBS Company L.L.C. ("Rainbow") in 2005, and channels 25-32 were assigned to EchoStar from Dominion in 2006.<sup>3</sup> EchoStar also operates over channels 23 and 24 under STA that has been in place for more than 13 years now.<sup>4</sup>

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<sup>1</sup> See Application of Direct Broadcasting Satellite Corp., *Memorandum Opinion and Order*, 8 FCC Rcd. 7959 (1993).

<sup>2</sup> See Application of Direct Broadcasting Satellite Corp. for Assignment of Direct Broadcasting Satellite Orbital Positions and Channels, *Order*, 11 FCC Rcd. 10494 (1996).

<sup>3</sup> See Rainbow DBS Company, LLC, *Memorandum Opinion and Order*, 20 FCC Rcd. 16868 (2005); Stamp Grant, EchoStar Satellite Operating Corporation, File No. SAT-ASG-20070608-00081 (granted Sept. 27, 2007), respectively.

<sup>4</sup> See Stamp Grant, File No. SAT-STA-20110909-00176 (granted Oct. 18, 2011).

EchoStar currently operates the EchoStar 3, EchoStar 12, and EchoStar 15 satellites in the 61.5° W.L. orbital cluster and has applied to launch the EchoStar 16 satellite to 61.5° W.L. The EchoStar 3 satellite, launched in 1998, was the first satellite in position at 61.5° W.L. and is currently an in-orbit spare. EchoStar 12, launched in 2003, has 13 transponders capable of using channels 1-23 (odd) and channel 24. EchoStar 15, launched in 2010, is a 32-transponder-capable satellite that operates a single large downlink broadcast beam encompassing the continental United States and Puerto Rico and two uplink spot beams. EchoStar 15 currently operates by STA on channels 23 and 24.<sup>5</sup> EchoStar 16, scheduled for launch in 2012, will further supplement the service provided from 61.5° W.L. and ensure the continued full utilization of the DBS spectrum at that orbital location.<sup>6</sup> In its application for EchoStar 16, EchoStar asked the Commission to approve the same channel swap for EchoStar 16 as EchoStar now asks for EchoStar 3, EchoStar 12, and EchoStar 15.<sup>7</sup> Grant of the instant applications in conjunction with the EchoStar 16 application will align EchoStar's authority at the 61.5° W.L. orbital location across all satellites at that location.

EchoStar seeks to modify its authority at 61.5° W.L. to swap its assigned channels 1 and 2 for the unassigned channels 23 and 24. Since this is a like-for-like exchange, it does not implicate the moratorium on applications for new DBS spectrum. This swap will increase satellite operational efficiencies and will better protect any future third party that may use the

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<sup>5</sup> *See id.*

<sup>6</sup> *See* EchoStar Satellite Operating Corporation, Application for Authority to Launch and Operate the EchoStar 16 Satellite at 61.5° W.L., File No. SAT-LOA-20110902-00172, Narrative at 3 (filed Sept. 2, 2011). The EchoStar 16 satellite was designed to operate spot beams on frequencies 18-32 to take advantage of contiguous spot beam frequency use at 61.5° W.L. Spot beams were also chosen in this frequency range to avoid affecting other operational networks.

<sup>7</sup> *See id.*, Narrative at 10-12.

unassigned channels at 61.5° W.L. from adjacent channel interference. Specifically, the swap will eliminate one of the two edges of the current unassigned channel cluster where there is spectrum overlap with the assigned channel cluster. This is because, under this proposal, channel 1 will not overlap with any DBS channel licensed to EchoStar.

## **II. REQUEST TO MODIFY AUTHORIZATION TO PERMIT PERMANENT OPERATION OVER DBS CHANNELS 23 AND 24 AND TO OPERATE UNDER SPECIAL TEMPORARY AUTHORITY OVER CHANNELS 1 AND 2**

### **A. Swap of Assigned Frequency Channels**

As the Commission has said in approving other channel exchanges or swaps in DBS assignments, a swap is “a minor change [that] does not entail the use of any additional orbit/spectrum resources.”<sup>8</sup> As a result of the swap, EchoStar will continue operating the same number of channels as it does currently, and equivalent channels will remain available for assignment once the DBS freeze is lifted.

The channel swap should not be subject to the DBS freeze because it does not increase EchoStar’s assignment, change its orbital location, or affect any other provider. It is essentially a minor modification, as EchoStar does not seek to “add frequencies or [an] orbital location.”<sup>9</sup> Consequently, there will be no change in the number of channels at that orbital location available for assignment by the Commission.

Should the Commission find that the DBS freeze is applicable to this request, EchoStar requests a waiver to the extent necessary to accomplish the channel swap. The Commission may

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<sup>8</sup> Application of United States Satellite Broadcasting Company, Inc. for Modification of Construction Permit for Direct Broadcast Satellite System, *Memorandum Opinion and Order*, 5 FCC Rcd. 7576 ¶ 3 (1990).

<sup>9</sup> Public Notice, Direct Broadcast Satellite (DBS) Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications, 20 FCC Rcd. 20618, 20619 (2005) (“*DBS Freeze*”).

waive its rules for good cause shown, particularly where strict compliance with a rule is inconsistent with the public interest when taking “into account considerations of hardship, equity, or more effective implementation of overall policy.”<sup>10</sup> The increased efficiencies and ease of coordination, discussed below, provide more than adequate good cause. And, as discussed below, these public benefits accrue without circumventing the Commission’s underlying policy in effecting the DBS freeze.

The proposed channel swap will better serve the Commission’s policy in favor of efficient spectrum use through improved efficiency for EchoStar’s operations and easier coordination for any subsequent operator assigned channels 1 and 2. The swap will improve the technical efficiency of EchoStar’s operations from the 61.5° W.L. slot by positioning all of EchoStar’s channels in a single block. Assuming the permanent authorization for the final two channels is assigned to another provider, the proposed channel swap will ensure that the third party’s channels will no longer be bordered on both sides by overlapping DBS spectrum licensed to EchoStar. As the Commission is well aware, adjacent DBS channels overlap significantly under the applicable Region 2 International Telecommunication Union Broadcasting-Satellite Service plan. The reassignment would allow the new licensee and EchoStar alike to more easily protect these operations from one another than would be the case if EchoStar’s licensed channels were not contiguous. This proposed swap would also decrease the potential for harmful interference and ease coordination for the new operator both in terms of causing interference to other satellite operators or dealing with interference from other operators. Consequently, either by finding that the freeze does not apply or by waiver, granting the proposed swap serves the public interest.

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<sup>10</sup> 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

## **B. Continued Use of the Remaining Channels Under STA**

EchoStar also requests that its current STA to operate EchoStar 15 over channels 23 and 24 at the nominal 61.5° W.L. orbital location be modified to apply to channels 1 and 2 instead of 23 and 24 and extend to EchoStars 3, 12, and 15 as part of these applications. Grant of the STA is a precondition to EchoStar's use of the modification authority requested here, and vice versa. Modification and extension of this STA in conjunction with the relief requested above will ensure that the Commission objective—that spectrum not remain fallow—continues to be fulfilled.

As EchoStar has previously described to the Commission, the nominal 61.5° W.L. DBS orbital location has a unique history.<sup>11</sup> In stark contrast to the other assigned DBS orbital locations, two channels have remained unassigned and unlicensed. In fact, these channels “are the only two remaining unassigned DBS channels in the 12 GHz band that are assigned to the United States that can provide service to most of the contiguous United States.”<sup>12</sup>

The future of these unassigned channels is, however, also subject to the uncertainty surrounding the *Northpoint* decision that vacated the Commission's DBS auction rules, and the DBS freeze implemented by the Commission in response to that decision.<sup>13</sup> As a result, a new licensee will not be in a position to provide services from these channels for a number of years. In fact, while the Commission initiated a proceeding in 2006 to establish the mechanism by

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<sup>11</sup> See Stamp Grant, File No. SAT-STA-20110303-00048 (granted Apr. 19, 2011).

<sup>12</sup> Rainbow DBS Company, LLC and EchoStar Satellite L.L.C., *Memorandum Opinion and Order*, 20 FCC Rcd. 16868, 16880 ¶ 29 (2005) (“*Rainbow 1 Assignment Order*”).

<sup>13</sup> *Northpoint Technology Ltd. v. FCC*, 412 F.3d 145 (D.C. Cir. 2005); see also *DBS Freeze*.

which these channels could be ultimately licensed and operated, that proceeding is still pending.<sup>14</sup>

In an effort to ensure that such valuable spectrum does not lie fallow, the Commission has authorized DBS providers to operate on these channels for 13 years subject to different conditions. The Commission initially granted EchoStar's predecessor-in-interest STA to operate on channels 23 and 24, as well as 8 channels assigned to Dominion Video Satellite, Inc. and 11 channels assigned to Rainbow on March 21, 1998.<sup>15</sup> Rainbow subsequently operated on channels 23 and 24 pursuant to STA for a two-year period<sup>16</sup> before EchoStar's predecessor-in-interest acquired the Rainbow 1 satellite and related authorizations in 2005.<sup>17</sup> On January 1, 2008, EchoStar's predecessor-in-interest assigned the STA to EchoStar as part of a *pro forma* corporate reorganization under which EchoStar Communications Corporation spun off its

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<sup>14</sup> See Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service in the United States, *Notice of Proposed Rulemaking*, 21 FCC Rcd. 9443 (2006).

<sup>15</sup> See Direct Broadcasting Satellite Corporation, Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 1-21 (odd) and 23-32 (odd and even) at 61.5° W.L., *Memorandum Opinion and Order*, 13 FCC Rcd. 6392 (1998) ("*EchoStar 1998 STA Grant*"). For a full description of the regulatory history of these channels, see EchoStar Corporation, Request for Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the 61.5° W.L. Orbital Location, File No. SAT-STA-20090821-00092, Narrative at 2 n.3 (granted Dec. 1, 2009).

<sup>16</sup> Rainbow received STA to operate on the unassigned channels in 2003. EchoStar Satellite Corporation and Rainbow DBS Company LLC, *Order and Authorization*, 18 FCC Rcd. 19825 (2003) ("*Rainbow STA Order*").

<sup>17</sup> The Rainbow STA was assigned to EchoStar Satellite L.L.C. in October 2005 as part of the sale of the Rainbow 1 satellite to EchoStar. See Stamp Grant, File No. SAT-STA-20050926-00183 (granted Sept. 30, 2005); see also *Rainbow 1 Assignment Order*. The STA was then assigned from EchoStar Satellite L.L.C. to an affiliate, EchoStar Satellite Operating Corporation ("old ESOC") in September 2006. See Public Notice, Policy Branch Information Actions Taken, Application for Pro Forma Assignment of Licenses from EchoStar Satellite L.L.C. to EchoStar Satellite Operating Corporation, 21 FCC Rcd. 10245 (2006).

wholly-owned subsidiary, EchoStar.<sup>18</sup> Since then, the Commission has repeatedly renewed EchoStar's STA for the two channels. The EchoStar 15 satellite currently operates on the unassigned channels 23 and 24 subject to STA.<sup>19</sup>

The Commission has highlighted repeatedly "the importance of ensuring that spectrum can continue to serve the public rather than lying fallow unnecessarily, even on a temporary basis."<sup>20</sup> During the past 13 years, the flexibility provided by this much-needed capacity has proven instrumental to DBS providers. EchoStar therefore requests that its current STA for channels 23 and 24 at the nominal 61.5° W.L. orbital location be modified to apply to channels 1 and 2 instead of 23 and 24 and extend to EchoStars 3, 12, and 15 as part of these applications. As part of this requested modification, EchoStar agrees to abide by the same conditions for channels 1 and 2 that are currently in place for channels 23 and 24 for EchoStar 15.

### **III. THIS APPLICATION IS LEGALLY AND TECHNICALLY COMPLETE**

The channel swap does not change the operating parameters previously provided to the Commission for the EchoStar 3, EchoStar 12, and EchoStar 15 satellites. For the STA, EchoStar will operate on channels 1 and 2 under the same conditions as EchoStar currently operates on channels 23 and 24. Therefore, there are no technical changes to the technical parameters of the satellites.

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<sup>18</sup> See Public Notice, Policy Branch Information Actions Taken, DA 07-4655 (rel. Nov. 16, 2007) (consenting to the transfer of several authorizations as part of the spin-off).

<sup>19</sup> See Stamp Grant, File No. SAT-STA-20110909-00176 (granted Oct. 18, 2011).

<sup>20</sup> *Rainbow STA Order* ¶ 8; see also *EchoStar 1998 STA Grant* ¶ 7 ("furthering the Commission's objective to make efficient use of available spectrum").



#### IV. CONCLUSION

For the foregoing reasons, EchoStar respectfully requests the grant of its application for a modification of its channels by swapping the channels on which it is authorized to operate from channels 1-22 and 25-32, to channels 3-32, and to operate on channels 1 and 2 at the nominal 61.5° W.L. orbital location under Special Temporary Authority. EchoStar asks that this swap be made effective upon the successful launch, operational check-out, and move to 61.5° W.L. of EchoStar 16 later this year.

Respectfully submitted,

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/s/

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March 1, 2012