

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Compass Systems, Inc.	)	File No. SAT-MSC-20020325-00054
Application for Review	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** April 30, 2007

**Released:** May 2, 2007

By the Commission:

**I. INTRODUCTION**

1. With this decision we deny Compass Systems, Inc.'s (Compass) Application for Review of a letter decision by the International Bureau and the Wireless Telecommunications Bureau. The decision dismissed, as premature and therefore unacceptable for filing, Compass's application for authority to construct a Direct Broadcast Satellite (DBS) system combined with a nationwide terrestrial network operating in the 12.2-12.7 GHz frequency band.<sup>1</sup> Compass has not demonstrated that the Bureaus improperly dismissed the application as premature. Further, Compass has not demonstrated that the Bureaus would have reached a different result if they had considered Compass's application as an "integrated" system that could not be separated into satellite and terrestrial components.

**II. BACKGROUND**

**A. Northpoint Application**

2. The 12.2-12.7 GHz frequency band, also referred to as the Ku-band, is allocated for use on a co-primary basis by DBS, the fixed service, and non-geostationary satellite orbit fixed-satellite service systems (NGSO FSS).<sup>2</sup> In 1998, Compass's corporate parent, Northpoint Technology, Ltd. (Northpoint), filed a petition for rulemaking requesting authority to use the 12.2-12.7 GHz bandwidth for a terrestrial point-to-multipoint service that could allow DBS subscribers to receive additional channels.<sup>3</sup> As described by Northpoint, its technology "use[s] northward pointing receivers at a DBS subscriber's location to receive signals transmitted from terrestrial towers whose directional antennas point

<sup>1</sup> Letter from Donald Abelson, Chief, International Bureau, and John B. Muleta, Chief, Wireless Telecommunications Bureau, to Antoinette Cook Bush, Vice President, Compass Systems, Inc., 18 FCC Rcd 3091, DA 03-410 (March 3, 2003) (*Letter Decision*); Application for Review of Compass Systems, Inc., (filed April 2, 2003) (Application for Review).

<sup>2</sup> See Table of Frequency Allocations, 47 C.F.R. § 2.106. Radio services with a primary allocation are protected from harmful interference by radio services allocated on a secondary basis. See 47 C.F.R. § 2.104(d).

<sup>3</sup> See Office of Public Affairs Reference Operations Division Petitions for Rulemaking Filed, *Corrected Public Notice*, Report No. 2265 (rel. Mar. 23, 1998) (Northpoint Technology Request for Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial use of the 12.2-12.7 GHz band by Digital Broadcast Satellite Licensees and their Affiliates, filed on March 6, 1998).

southward."<sup>4</sup> On January 8, 1999, Northpoint, through its subsidiaries Broadwave Albany, L.L.C. *et al.*, filed applications, with accompanying waiver requests, for licenses to operate a terrestrial network in the 12 GHz band.<sup>5</sup>

3. In December 2000, the Commission adopted the *First Report and Order* in the Ku-band sharing proceeding, in which, among other things, the Commission established a new terrestrial point-to-multipoint video and distribution service, referred to as the Multichannel Video Distribution and Data Service (MVDDS). The Commission determined that MVDDS could operate under the existing co-primary fixed service allocation in the 12.2-12.7 GHz band.<sup>6</sup> In the 2002 *Second Report and Order* in the Ku-band sharing proceeding, the Commission adopted service rules for the MVDDS service, which, among other things, included use of competitive bidding procedures to award MVDDS licenses, and held that DBS licenses do not include authority to make terrestrial use of the 12.2-12.7 GHz band.<sup>7</sup> In the same decision, the Commission dismissed the Northpoint applications, without prejudice to re-filing when a pre-auction filing window opened for MVDDS applications.<sup>8</sup>

4. Northpoint petitioned for judicial review of the Commission's decisions to award MVDDS licenses by auction and to dismiss its applications.<sup>9</sup> Northpoint argued that the Commission should have granted it exclusive access to the MVDDS spectrum by virtue of its having been the first applicant to propose MVDDS service.<sup>10</sup> It also argued that the Commission's decision to use auctions for MVDDS violated Section 647 of the ORBIT Act, which prohibits the use of auctions to assign orbit locations or spectrum used to provide international or global satellite services. Northpoint maintained that this prohibition applies to any spectrum used to provide global satellite service, regardless of whether other uses are made of that spectrum. Thus, according to Northpoint, the Commission improperly auctioned MVDDS licenses in the same 12 GHz spectrum being used by DBS satellite systems, which can provide either domestic or international service, and by the NGSO FSS, which is a global service.<sup>11</sup>

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<sup>4</sup> Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-band Frequency Range, *First Report and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 4096, 4160 ¶ 164 (2000) (*First Report and Order*).

<sup>5</sup> *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on Broadwave Albany, L.L.C., *et al.* Requests for Waiver of Part 101 Rules, DA 99-494, 14 FCC Rcd 3937 (1999). Albany was the first in a list of 68 entities referring to themselves as "Broadwave," followed by their city of proposed service. In dismissing these applications, the Commission considered Northpoint and the Broadwave subsidiaries to be one and the same, referring to all as "Northpoint." Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-band Frequency Range, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9620 ¶ 7 n. 17 (2002) (*Second Report and Order*).

<sup>6</sup> *First Report and Order*, 16 FCC Rcd at 4161 ¶ 167.

<sup>7</sup> *Second Report and Order*, 17 FCC Rcd at 9705 ¶ 238.

<sup>8</sup> *Second Report and Order* 17 FCC Rcd at 9697 ¶ 214.

<sup>9</sup> *Northpoint Technology, Ltd. et al. v. Federal Communications Commission*, 414 F.3d 61 (D.C. Cir. 2005) (*MVDDS Appeal*).

<sup>10</sup> *Id.* at 68.

<sup>11</sup> *Id.* at 73.

## B. Compass Application

5. In 1995, the Commission adopted competitive bidding procedures to award DBS licenses.<sup>12</sup> In March 2002, Compass filed an application for authority to construct an international DBS system, requesting immediate “interim” assignment to all 32 DBS channels available at each of the 157° W.L. and 166° W.L. orbital locations.<sup>13</sup> In its application, Compass asserted that its proposed international satellite system was not subject to competitive bidding procedures.<sup>14</sup> Based on these “interim” DBS assignments, Compass also requested authority to operate what it described as a nationwide integrated terrestrial platform on the same frequencies that would be used by its DBS system. Compass did not seek authority to launch or operate its DBS system.<sup>15</sup>

6. The International Bureau and the Wireless Telecommunications Bureau jointly dismissed the Compass Application as premature and therefore unacceptable for filing, without prejudice to re-filing, in a March 2003 *Letter Decision*. The Bureaus stated that the competitive bidding rules for the DBS service then in effect allowed the filing of short-form applications for DBS channels only during filing windows established by public notice. Because there was no open filing window when Compass filed its Application, the DBS application was premature.<sup>16</sup> Similarly, the Bureaus also found that because the Commission had adopted competitive bidding procedures for MVDDS licenses covering the same spectrum and uses as those specified in Compass's terrestrial proposal, but had not opened a filing window for MVDDS applications, Compass's proposal, which was, in effect, an MVDDS proposal, was premature. The *Letter Decision* noted that the Commission had announced future filing windows both for DBS applications (Auction No. 52),<sup>17</sup> and for MVDDS applications (Auction No. 53).<sup>18</sup>

7. Compass did not participate in either Auction No. 52 or Auction No. 53. Instead, Compass joined Northpoint in a judicial challenge to the Commission's authority to conduct auctions for DBS licenses.<sup>19</sup> Compass also filed this Application for Review of the *Letter Decision*. In the

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<sup>12</sup> Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 11 FCC Rcd 9712 (1995). Before the adoption of DBS auctions, licensees were required to meet a two-step due diligence requirement. First, they had to begin construction or complete contracting for construction within one year of grant of their construction permit. Only upon meeting that requirement were orbital locations and channels assigned on a first-come, first-served basis. Advanced Communications Corp., *Memorandum Opinion and Order*, 11 FCC Rcd. 3399, 3402 ¶ 6 (1995).

<sup>13</sup> Application of Compass Systems, Inc. for Authority to Construct an International Direct Broadcast Satellite System, File No. SAT-MS-C-20020325-00054 (Compass Application).

<sup>14</sup> Compass Application at 25.

<sup>15</sup> Compass Application at 6.

<sup>16</sup> In addition, Compass failed to meet other filing requirements of the Commission's rules, including the requirement to file its application electronically. *Letter Decision*, 18 FCC Rcd at 3091; 47 C.F.R. § 1.2105(a) (2002).

<sup>17</sup> *Letter Decision*, 18 FCC Rcd at 3092 n. 7 (citing Auction of Direct Broadcast Satellite Service Licenses Scheduled for August 6, 2003, *Public Notice*, 18 FCC Rcd 3478, FCC 03-40 (rel. March 3, 2003)).

<sup>18</sup> *Letter Decision*, 18 FCC Rcd at 3092 n. 6 (citing Auction of Multichannel Video Distribution and Data Service Licenses Rescheduled for June 25, 2003, *Public Notice*, 18 FCC Rcd 1105, DA 03-286 (rel. Jan. 30, 2003)). Both the DBS and MVDDS filing windows were deferred from the dates cited in the *Letter Decision*. The filing window for DBS applications (Auction No. 52) was open from May 13, 2004 to May 21, 2004. The filing window for MVDDS applications (Auction No. 53) was open from October 29, 2003 to November 12, 2003. There was also a second MVDDS auction (Auction No. 63) when a filing window was open from September 28, 2005 to October 7, 2005.

<sup>19</sup> Northpoint Technology, Ltd. and Compass Systems, Inc. v. Federal Communications Commission, 412 F.3d 145 (D.C. Cir. 2005) (*DBS Appeal*). Northpoint and Compass challenged the Commission's conclusion that it remained

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Application for Review, Compass raises the same legal theory underlying the Northpoint and Compass judicial appeals. Specifically, Compass argues that the ORBIT Act<sup>20</sup> prohibits auctions in any spectrum band used to provide international satellite services, as is the case here, and therefore the Bureaus improperly dismissed the Compass application as premature.<sup>21</sup>

### C. Appellate Court Decisions

8. In 2005, the D.C. Circuit issued rulings on the Northpoint and Compass appeals. In the *MVDDS Appeal*, the D.C. Circuit held that the ORBIT Act does not ban auctioning of MVDDS licenses.<sup>22</sup> Because the wording of Section 647 of the Act is ambiguous, the appellate court deferred to the Commission's reasonable interpretation of the Act to allow assignment of MVDDS licenses using competitive bidding procedures.<sup>23</sup> The D.C. Circuit therefore upheld the MVDDS auction. In the *DBS Appeal*, the D.C. Circuit held that the Commission's construction of the ORBIT Act to exclude DBS from the auction prohibition because DBS is a domestic service, while reasonable, was not supported by the record.<sup>24</sup> The appellate court therefore held that the DBS auction was invalid.<sup>25</sup>

### D. Compass Application for Review

9. Compass asserts in its Application for Review that the ORBIT Act prohibits auctioning the orbital locations and spectrum it seeks for its system. Compass states that it specifically sought authorization to provide an international DBS service with an integrated terrestrial component. Compass disputes the Commission's conclusion, in the *DBS Auction Order*, that DBS is a domestic service not subject to the ORBIT Act auctions prohibition. Compass also contends that another co-primary service allocated in the same spectrum, the NGSO FSS, provides indisputably international service.<sup>26</sup> In Compass's view, the ORBIT Act prohibition limits the Commission's authority to auction any spectrum even partially used for international service, regardless of the nature of licenses being awarded for use in that spectrum.<sup>27</sup> Compass notes that the Commission accepted for filing other applications proposing international DBS systems. Thus, Compass concludes that the Bureaus improperly denied its application on the ground that it was premature in advance of auction filing windows.

10. Compass further argues that the Bureaus erroneously treated its application as an application for two different systems, rather than as an integrated system. Compass maintains that it did not seek a domestic DBS license nor did it seek authorization to provide a terrestrial service on a stand-

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authorized to auction DBS licenses notwithstanding Section 647 of the ORBIT Act. *See* Auction of Direct Broadcast Satellite Licenses, *Order*, 19 FCC Rcd 820 (2004) (*DBS Auction Order*). As previously noted, Northpoint separately challenged the Commission's authority to conduct auctions for MVDDS licenses. *MVDDS Appeal*, 414 F.3d 61.

<sup>20</sup> Open-Market Reorganization for the Better of International Telecommunications Act (ORBIT Act), Pub. L. No. 106-180, § 647, 114 Stat. 48 (2000) (codified at 47 U.S.C. § 765f).

<sup>21</sup> Application for Review of Compass Systems, Inc., of the March 3, 2003 decision of the International Bureau and Wireless Telecommunications Bureau, DA 03-410 (Application for Review) at 9, 17.

<sup>22</sup> *MVDDS Appeal*, 414 F.3d at 73.

<sup>23</sup> *Id.*

<sup>24</sup> *DBS Appeal*, 412 F.3d at 156.

<sup>25</sup> *Id.*

<sup>26</sup> Application for Review at 17.

<sup>27</sup> *Id.*

alone basis.<sup>28</sup> Compass does not specify how this analysis would have led the Bureaus to reach a different result. Based on its pleading, however, we assume that Compass is claiming that had the Bureaus considered its proposals as inseparable, the Bureaus would have recognized the unique spectrum efficiency of its proposal and would have granted it. Compass also seems to suggest that treating its proposal as a whole would have required the Bureaus to accept the application for filing, as the Bureaus had done with other allegedly similarly situated applicants. In this regard, Compass suggests that its request for a terrestrial component should be viewed as a flexible use of the 12 GHz Ku-band spectrum, which Compass sees as comparable to Commission grant of ancillary terrestrial use of satellite spectrum by Mobile Satellite Service providers and use of terrestrial repeater stations for Digital Audio Radio Service licensees.<sup>29</sup>

### III. DISCUSSION

#### A. The *Letter Decision* Was Proper

##### 1. Dismissal of the MVDDS Proposal

11. We affirm the Bureaus' dismissal of the terrestrial portion of the Compass Application. While Compass characterizes its terrestrial proposal as a request for "flexible terrestrial use of spectrum allocated to satellite systems,"<sup>30</sup> the terrestrial services Compass seeks to provide are, in essence, MVDDS. As such, Compass should have participated in the auction for MVDDS licenses -- an auction that has been upheld by the Court of Appeals.<sup>31</sup> However, Compass chose not to participate. Moreover, it cannot justify its failure to participate by calling its MVDDS proposal by another name. This would be clearly contrary to the Commission's MVDDS decisions. As the Bureaus correctly stated in the *Letter Decision*, a short-form application filed during an MVDDS window, followed by participating in the auction, are the only means to request authorization for terrestrial use of the 12 GHz frequency band. Granting Compass the relief it requests would require us to aggregate the terrestrial 12 GHz spectrum nationwide and grant a single MVDDS license to a single new entrant -- Compass itself -- without an auction.<sup>32</sup>

12. Consideration of Compass's application for a nationwide MVDDS license at this time is precluded by the Commission's allocation decisions,<sup>33</sup> its determination to license MVDDS through the use of 214 geographic area licenses through competitive bidding, and the appellate court's now-final decision affirming the Commission's use of competitive bidding. At this point in time, the Commission has held two MVDDS auctions where all 214 MVDDS licenses were won by winning bidders. Thus, there is no basis to reinstate Compass's MVDDS proposal and we, accordingly, deny the portion of Compass's Application for Review seeking reinstatement of its request for authority to operate a terrestrial nationwide system in the 12 GHz band.

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<sup>28</sup> Application for Review at 9.

<sup>29</sup> Application for Review at 19-20.

<sup>30</sup> Application for Review at 19.

<sup>31</sup> All 214 available MVDDS licenses nationwide were auctioned in Auction No. 53 and Auction No. 63. See FCC Auctions Fact Sheet webpages: [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_factsheet&id=53](http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=53); [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_factsheet&id=63](http://wireless.fcc.gov/auctions/default.htm?job=auction_factsheet&id=63).

<sup>32</sup> Compass Application at 20.

<sup>33</sup> See paragraph 3, *supra*.



## 2. Dismissal of the DBS Proposal

13. We also affirm the Bureaus' dismissal of the DBS proposal in Compass's Application. At the time Compass filed its application, the Commission had in place filing and processing procedures for DBS applicants proposing satellites that would operate from orbit locations that the International Telecommunication Union assigned to the United States for the provision of domestic DBS service.<sup>34</sup> Further, the Bureaus reminded Compass of these procedures when they dismissed the DBS proposal and invited Compass to participate in the then-upcoming DBS auction, which involved both orbit locations Compass had requested. Thus, the Bureaus correctly dismissed the DBS portion of the Compass application as premature.

14. Compass argues that the dismissal, however, is inconsistent with treatment afforded to other applications proposing "international DBS" service. Compass cites a pending petition for declaratory ruling filed by SES Americom, Inc. requesting access to the United States market from a Gibraltar-licensed satellite at the 105.5° W.L. orbital location.<sup>35</sup> Significantly, the orbital location from which SES Americom proposed to operate is not one of the eight orbital locations assigned to the United States for DBS in the International Telecommunication Union Region 2 Band Plan, for which the Commission had adopted auction procedures. Thus, the Commission did not have procedures in place to conduct an auction with respect to the 105.5° W.L. orbital location. Given this, the Commission accepted the petition for filing, and requested comment on the technical feasibility of the SES Americom proposal.<sup>36</sup> Both of the orbital locations requested by Compass, however, are assigned to the United States in the Region 2 Band Plan, and are therefore locations for which the Commission had auctions procedures in place when Compass filed its Application.

15. The Court of Appeals' subsequent invalidation of the DBS auction on the ground that the record did not support the Commission's characterization of DBS as a domestic service does not change our conclusion that we should not reinstate Compass's DBS proposal. On remand from the D.C. Circuit in the *DBS Appeal*, the Commission nullified the results of Auction No. 52, dismissed the pending applications for the 157° W.L. and 166° W.L. orbital locations,<sup>37</sup> and adopted a freeze on the filing of all new DBS applications.<sup>38</sup> The Commission has since proposed new processing rules for assigning future

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<sup>34</sup> Under the terms of the Region 2 BSS and feeder link Plans, the United States is assigned eight orbital locations for providing broadcasting-satellite service. The eight U.S. orbital positions, proceeding from east to west (all West Longitude), are 61.5°, 101°, 110°, 119°, 148°, 157°, 166°, and 175°. The ITU Region 2 BSS Plan is comprised of the Plan for BSS in the band 12.2-12.7 GHz in ITU Region 2, as contained in Appendix 30 of the ITU Radio Regulations, and the associated Plan for the feeder-links in the frequency band 17.3-17.8 GHz for the broadcasting-satellite service in Region 2, as contained in Appendix 30A of the ITU Radio Regulations.

<sup>35</sup> See Satellite Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00110 (rel. May 17, 2002).

<sup>36</sup> International Bureau Seeks Comments on Proposals to Permit Reduced Orbital Spacings Between U.S. Direct Broadcast Satellites, *Public Notice*, Report No. SPB-196, 18 FCC Rcd 25683 (2003). Subsequently, the International Bureau granted two authorizations for reduced orbital spacing. EchoStar Satellite L.L.C., *Order and Authorization*, DA 06-2440 (Int'l Bur. rel. Nov. 29, 2006); Spectrum Five, LLC, *Order and Authorization*, DA 06-2439 (Int'l Bur. rel. Nov. 29, 2006). The Satellite Division also requested additional information regarding a reduced orbital spacing application by SES Americom. November 29, 2006 letter from Robert G. Nelson, Chief, Satellite Division, to Nancy J. Eskinazi, SES Americom, Inc. (DA 06-2438).

<sup>37</sup> Policy Branch Information, Actions Taken, *Public Notice*, Report No. SAT-00349, DA 06-601 (rel. March 17, 2006).

<sup>38</sup> Direct Broadcast Satellite (DBS) Service Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications, *Public Notice*, 20 FCC Rcd 20618 (2005) (*DBS Applications Freeze*). The *DBS Applications Freeze* applies to any application for

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DBS licenses.<sup>39</sup> To avoid any disparate treatment, all parties interested in the 157° W.L. and 166° W.L. orbital locations must be placed on an equal footing. Compass, the winning bidder at Auction No. 52, and any other interested parties may apply for DBS licenses under the new DBS licensing procedures when they are adopted and become effective.<sup>40</sup> We therefore deny Compass's request to reinstate its DBS application.

### 3. Integrated System or Stand-Alone Components

16. Finally, Compass argues that it did not apply for and does not wish to have a stand-alone terrestrial system and that the Bureaus incorrectly viewed the application as such.<sup>41</sup> Initially, we find this assertion is contradicted by the record, which documents Compass's plans to begin terrestrial operations while it raised financing for its DBS satellites.<sup>42</sup> Indeed, had the Bureaus permitted Compass to initiate MVDDS on the basis of an "integrated" request, they would have allowed Compass to circumvent the MVDDS auction process while preserving its right to decide whether, and if so, when to apply for launch and operating authority for its DBS satellites.<sup>43</sup>

17. Further, if the Bureaus had considered Compass's terrestrial component as inseparable from the DBS component, that consideration would have led to the same result – dismissal of the entire application. As previously discussed, the Bureaus properly dismissed both the DBS and MVDDS portions of the application. Under an "integrated" approach, dismissal of either proposal would have required dismissal of the other, as well.

18. Moreover, we find that Compass's request to provide MVDDS as a permissible "flexible use" of its DBS license, without participating in an MVDDS auction, is precluded by the Commission's rejection of a similar proposal. In comments on the *Further Notice of Proposed Rulemaking*, EchoStar argued that existing DBS licensees should be exempt from competitive bidding for MVDDS licenses because they had purchased their DBS spectrum licenses at auction.<sup>44</sup> EchoStar also contended that

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new space stations to provide DBS service to the United States, or any new requests for market access by foreign-licensed space stations to provide DBS service to the United States.

<sup>39</sup> Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States, *Notice of Proposed Rulemaking*, 21 FCC Rcd 9443 (2006).

<sup>40</sup> The D.C. Circuit has recognized the Commission's authority to change license allocation procedures midstream. *See Bachow Communications, Inc. v. Federal Communications Commission*, 237 F.3d 683, 686 (D.C. Cir. 2001) (Commission imposed an application freeze, considered changing method of allocation 39 GHz licenses from comparative hearings to competitive bidding); *DIRECTV, Inc. v. Federal Communication Commission*, 110 F.3d 816 (D.C. Cir. 1997) (upholding change from pro rata distribution policy to competitive bidding). Courts have also explained that applicants do not gain any vested right merely by filing an application. *See Hispanic Info. & Telecomms. Network v. FCC*, 865 F.2d 1289, 1294-95 (D.C.Cir.1989) ("The filing of an application creates no vested right to a hearing; if the substantive standards change so that the applicant is no longer qualified, the application may be dismissed."); *Schraier v. Hickel*, 419 F.2d 663, 667 (D.C.Cir.1969) (filing of application that has not been accepted does not create a legal interest that restricts discretion vested in agency). *See also* Amendment of the Commission's Space Station Licensing Rules And Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 10760, 10864 ¶ 277 n. 669 (2003).

<sup>41</sup> Application for Review at 19.

<sup>42</sup> Compass Application at 7-8.

<sup>43</sup> At the time it filed its application, the fee for an application to construct a DBS satellite was \$2710; the fee for an application for construction, launch, and operating authority was \$27,050. Compass applied for construction authority only.

<sup>44</sup> *Second Report and Order*, 17 FCC Rcd at 9711-9712 ¶ 253.

allowing DBS licensees to make terrestrial use of their spectrum would be consistent with the Commission's spectrum flexible use policy. In the *Second Report and Order*, the Commission disagreed with EchoStar and declined to adopt a set-aside for DBS licensees or special bidding credits for them.<sup>45</sup> The Commission also held that DBS licenses do not include any authority to use the 12.2-12.7 GHz band for terrestrial services. Instead, the Commission found that the public interest would be served by assigning licenses for MVDDS spectrum as one single block per geographic service area, an approach that precludes setting aside spectrum for either existing or new DBS licensees.<sup>46</sup>

19. We also find that the cases Compass cites to support its claim that the Bureaus treated its application different from other applications for hybrid satellite/terrestrial systems are inapposite. Compass cites the Commission authorization of an ancillary terrestrial component (ATC) for Mobile Satellite Service (MSS) systems and terrestrial repeater stations for the Digital Audio Radio Service (DARS).<sup>47</sup> Contrary to Compass's characterization, both MSS ATC and DARS repeaters are designed and used to extend an operating satellite network into areas that cannot be adequately reached by the satellite signal. These terrestrial components may not be used to provide services that are independent from the satellite services. Thus, these cases are distinguishable from Compass's request to provide wholly separate programming on its proposed terrestrial and satellite facilities.<sup>48</sup>

#### IV. CONCLUSION

20. Based on the foregoing, we affirm the Bureaus' decision to dismiss Compass's Application as premature in both the DBS service and the MVDDS service. The Application for Review is denied.

#### V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that the Application for Review filed on April 2, 2003 by Compass Systems, Inc. IS DENIED.

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<sup>45</sup> *Id.* at 9712 ¶ 254.

<sup>46</sup> *Id.* at 9712 ¶ 254. Neither Compass nor Northpoint sought reconsideration of that Commission decision, a public interest determination that precludes grant of a license for a combined DBS/terrestrial system in this spectrum. As noted in the Background, Northpoint was the proponent of the MVDDS service, and an active participant in the record on which the *Second Report and Order* was based.

<sup>47</sup> Application for Review at p. 7.

<sup>48</sup> See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 1962, 2000 (2003) ("we intended to exclude 'services that differ materially in nature or character from the principal services offered by MSS providers'"); Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, *Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5754, 5810 ¶ 138 (1997) ("these terrestrial gap-fillers would re-transmit the information from the satellite to overcome the effects of signal blockage and multipath interference").



22. This *Memorandum Opinion and Order* is issued pursuant to Sections 4(i) and 5(c)(5) and (6) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c)(5) and (6), and Section 1.115 of the Commission's rules, 47 C.F.R. § 1.115.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary