

Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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DEC 30 1996

In the Matter of)

Directsat Corporation)

Application for Special)
Temporary Authority to)
Operate a Direct Broadcast)
Satellite System)

File No. 138-SAT-STA-96

In the Matter of)

EchoStar Satellite Corporation)

Application for Special)
Temporary Authority to)
Operate a Direct Broadcast)
Satellite System)

File No. 139-SAT-STA-96

CONSOLIDATED PETITIONS FOR RECONSIDERATION

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December 26, 1996

SUMMARY

EchoStar Satellite Corporation ("EchoStar") and Directsat Corporation ("Directsat," collectively "EchoStar/Directsat") hereby petition the International Bureau for reconsideration of the Bureau's Orders released November 26, 1996 in the above captioned proceedings.^{1/} In these two Orders, the Bureau denied EchoStar and Directsat their respective requests for Special Temporary Authority ("STA") that would have allowed them to use currently unused Direct Broadcast Satellite ("DBS") frequencies at the 119° W.L. orbital location. These STAs would have permitted EchoStar and Directsat to use the full capacity of their two DBS satellites and add a substantial number of DBS channels for the benefit of consumers across the country.

The Bureau's Orders run counter to one of the Commission's most fundamental spectrum management policies -- full utilization of the orbit and spectrum resources. As the Commission is aware, EchoStar and Directsat have invested hundreds of millions of dollars to construct and launch two DBS satellites, each equipped with 16 transponders. These satellites are capable of using all 32 available DBS channels at the 119° W.L. orbital location -- the 21 channels assigned to EchoStar and Directsat plus 11 channels assigned to another company, Tempo Satellite, Inc. ("Tempo"), but currently unused. The Bureau's decisions would allow 11 of those transponders to lie idle for an indefinite period of time.

^{1/} In the Matter of EchoStar Satellite Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite, Order, DA 96-1977 (rel. Nov. 26, 1996) ("EchoStar STA Denial"). In the Matter of Directsat Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite, Order, DA 96-1978 (rel. Nov. 26, 1996) ("Directsat STA Denial").

The Bureau's denial of the STA requests were inconsistent with past practice and based upon incorrect factual findings. First, the Bureau incorrectly stated that the STA previously granted to EchoStar had been intended only as a "temporary bridge" until Directsat's first satellite was launched at the same orbital location. That rationale disregards not only the Commission's standards in evaluating STA requests, but also the actual reasons for the Bureau's earlier STA grant to EchoStar. These reasons included most prominently the Bureau's desire to allow EchoStar "to offer more competition and more programming more quickly in the DBS service."^{2/} The grant was further based on the Commission's goal of fostering competition in the multi-channel video programming distribution ("MVPD") market. EchoStar and Directsat, a success story vindicating the Commission's DBS policies, are nevertheless handicapped as a new MVPD entrant -- even with the launch of Directsat's satellite -- by the fact that they have access to only 21 full-CONUS DBS channels while the incumbent provider, DIRECTV/USSB, has access to 32 channels. More importantly, EchoStar/Directsat soon will have to compete against the planned digital packages of dominant cable operators offering several hundreds of video channels. Thus, the reasons for the Bureau's earlier STA grant have not "disappeared," see EchoStar STA Denial at ¶ 5, Directsat STA Denial at ¶ 5. They are still fully applicable and a denial of EchoStar's and Directsat's latest STA requests run counter to their rationale.

The second ground for the STA denials was the Bureau's concern that consumers might be confused with "the reduction in service to subscribers that would result when Tempo ultimately begins its own DBS operations." EchoStar STA Denial at ¶ 6, Directsat STA Denial at ¶ 6. Even though EchoStar/Directsat were willing to apprise their customers of this eventuality

^{2/} In the Matter of EchoStar Satellite Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite, DA 96-270 (rel. March 4, 1996) ("EchoStar STA Grant") at ¶1.

(consistent with the Commission's STA precedent), the Bureau found that the language of the proposed notice would "not suffice to overcome the resulting problems." *Id.* at ¶ 7. This is the first time, however, that the Bureau has ever reviewed the adequacy of such a notice to customers, let alone find such a notice deficient. Whenever the Commission has required STA holders to notify customers of the possibility of service termination, it has not even asked them to submit the language of the notice for prior approval. In any event, EchoStar/Direcstare were and remain willing to remedy any perceived lack of clarity of the previously proposed notice and make the prospect of immediate service termination clearer to consumers. Indeed, EchoStar/Direcstare hereby submit more stringently worded language that provides additional clarity in that regard. EchoStar/Direcstare welcome any further improvements to the wording of the notice that the Bureau might consider necessary. EchoStar and Direcstare have consistently declared their readiness to cease operation upon Tempo's launch of a satellite to 119° W.L.

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TO: The International Bureau

CONSOLIDATED PETITIONS FOR RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, EchoStar Satellite Corporation ("EchoStar") and Directsat Corporation ("Directsat," collectively "EchoStar/Directsat") hereby petition the International Bureau for reconsideration of the Bureau's Orders released November 26, 1996 in the above captioned proceedings.^{1/} In these Orders, the Bureau denied EchoStar and Directsat their respective requests for Special Temporary Authority

^{1/} In the Matter of EchoStar Satellite Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite, Order, DA 96-1977 (rel. Nov. 26, 1996) ("EchoStar STA Denial"). In the Matter of Directsat Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite, Order, DA 96-1978 (rel. Nov. 26, 1996) ("Directsat STA Denial").

("STA") that would have allowed them to use currently unused Direct Broadcast Satellite ("DBS") frequencies at the 119° W.L. orbital location. The requested STAs would have permitted EchoStar and Directsat to use the full capacity of their two DBS satellites and add a substantial number of DBS channels for the benefit of consumers across the country.

I. BACKGROUND

In 1988, EchoStar and Directsat applied to the Commission for DBS systems utilizing 16 eastern and 16 western channels each. By Order released August 15, 1989, the Commission granted EchoStar and Directsat conditional permits to provide DBS service "from two or more satellites delivering 11 channels to each half of the United States, or from one or more satellites delivering 11 channels to the continental United States." Continental Satellite Corporation, 4 FCC Rcd. 6292, 6300 (1989). The Commission further provided, however, that each of EchoStar and Directsat retained the right to "receive reservations for additional channels, up to the total number of half-CONUS channels necessary to fulfill the proposal in its application, if DBS allocations are surrendered by other permittees or canceled by the Commission."^{2/} EchoStar's and Directsat's applications remain pending with respect to the unsatisfied portion of their request for 16 DBS channels each.

Subsequent to the 1989 Continental Order, the Commission found that both EchoStar and Directsat had satisfied the first prong of the Commission's due diligence test for its eastern assignments: each had completed contracting for a 16-transponder satellite. The Commission proceeded to assign 11 eastern channels to EchoStar (the odd-numbered assignments

^{2/} Id. More recently the Commission decided not to allow EchoStar and Directsat to exercise that right upon the cancellation of Advanced Communications Corporation's permit, in order to make possible an auction of Advanced's channels. See generally Revision of Rules and Policies for the Direct Broadcast Satellite Service, Report and Order, FCC 95-507 (rel. Dec. 15, 1995) (appeals pending).

1-21 at 119° W.L.) and 11 eastern channels to Directsat (including the ten even-numbered assignments 2-20 at 119° W.L.). See EchoStar Satellite Corporation, 7 FCC Rcd. 1765, 1770 (1992). Directsat Corporation, 8 FCC Rcd. 7962, 7964 (1993). The remaining channels at that orbital location (channels 22 through 32) were assigned to Tempo. Tempo Satellite, Inc., 7 FCC Rcd. 6597, 6600 (1992).

Subsequent to the merger between Directsat and an EchoStar affiliate,^{3/} EchoStar successfully launched its eastern satellite in late December 1995. In that same month, EchoStar requested Special Temporary Authority to operate its satellite on channels 23, 25, 27, 29 and 31 (assigned to Tempo) in addition to EchoStar's 11 assigned channels. EchoStar Satellite Corporation, File No. 22-SAT-STA-96, Minor Amendment to Request for Special Temporary Authority (filed Dec. 4, 1996). As EchoStar explained, the requested STA would enable it to offer a substantial expanded range of programming options, including educational and culturally diverse programming that could otherwise not be accommodated within EchoStar's assigned capacity. See id. at 2.

Tempo filed comments in response to EchoStar's STA request. Tempo did not oppose the request subject to a condition that EchoStar accepted: EchoStar would terminate operations on channels assigned to Tempo upon launch of Tempo's satellite to 119° W.L. By Order released March 4, 1996, the Bureau granted EchoStar's request subject to that condition.

On June 24, 1996, EchoStar filed a request for an extension of its STA. On the same date, Directsat requested Special Temporary Authority for its first satellite, scheduled for launch in September 1996. That STA would have allowed Directsat to operate all 16 transponders of its satellite on its assigned channels plus six of the channels assigned to Tempo (even-numbered 22-32). Tempo opposed these requests on various grounds. Directsat

^{3/} Directsat Corporation and EchoStar Corporation, 10 FCC Rcd. 88 (1995).

successfully launched its first satellite in September 1996. On November 26, 1996, the Bureau released the Orders in this proceeding denying EchoStar's and Directsat's STA requests.

II. ARGUMENT

A. The STA Denials Are Inconsistent With Commission Precedent

In Mobile Datacom Corporation, 10 FCC Rcd. 4552, 4553 (1995), the Commission articulated the standard for evaluating STA requests in the satellite area: "If temporary operations do not adversely affect other licensed satellites, the Commission readily authorizes their use." Id. As the Commission has explained, "[a]llowing the temporary use of existing orbital resources will permit the public to receive services that would not otherwise be available." Newcomb Communications, Inc., 8 FCC Rcd. 3631, 3632 (1993).

This standard clearly is satisfied here. The DBS frequencies in question are unused. EchoStar/Directsat are uniquely situated to put this resource to productive temporary use. They have launched two satellites at the 119° W.L. orbital location equipped with enough transponder capacity to use fully the available spectrum. Without an STA, 11 DBS channels will continue to lie fallow and a total of 11 transponders on both satellites will be idle. Consumers will be deprived of up to 70 channels of additional video programming that EchoStar/Directsat would offer. At the same time, there is no question that the requested operation will not cause harmful interference to any authorized user of the spectrum. EchoStar/Directsat have agreed to cease operations immediately upon Tempo's launch of a satellite to 119° W.L.

In similar circumstances, the Commission has regularly granted requests for special temporary authority so long as the temporary operations do not adversely affect licensed satellite

systems.^{4/} Indeed, the Commission has previously allowed a DBS licensee to operate on channels assigned another company where the DBS channels in question were unused. See In The Matter of Hughes Communications Galaxy, Inc. Application for Special Temporary Authority for the DBS-2A Direct Broadcast Satellite, 10 FCC Rcd. 9339 (1995).

Underlying the Commission's decisions is its fundamental spectrum management policies favoring the fullest possible interference-free use of the spectrum and orbital arc. Other manifestations of these policies include the stringent financial standards imposed on satellite licensees in certain services as well as the requirement of full frequency reuse for geostationary FSS licensees. Because of reasons peculiar to the DBS service (including its uncertain commercial prospects and the high cost of high-power DBS systems), the Commission has justly found it inappropriate to impose the same stringent spectrum-efficiency rules on DBS permittees. This makes it all the more imperative to encourage the fullest possible use of the spectrum by the few DBS proponents that have managed to overcome the serious commercial and technical hurdles characterizing the service.

^{4/} See e.g., Newcomb Communications, Inc., 8 FCC Rcd. 3631 (1993) (granting Newcomb's application for authority to construct and operate 10,000 transmit-only mobile earth stations in the 1610-1626.5 MHz frequency band because there was no significant interference potential between Newcomb's operations and the operations of others now using the band, but requiring Newcomb to terminate operations immediately upon the launch of a satellite by a regularly licenses Big LEO MSS provider in the same band); American Mobile Satellite Corp., 7 FCC Rcd. 942 (1992) (authority to provide interim land mobile satellite service in the lower L-band frequencies granted with condition that interim service providers transition to dedicated upper L-band system when it is brought into service); ARC Professional Services Group, 5 FCC Rcd. 5398 (Com Car. Bur. 1990) (applicant granted temporary authority to operate tracking and data relay satellite system C-band transponders on a commercial basis until that orbital location was ready to be occupied by a regularly assigned licensee); Satellite Business Systems, Mimeo No. 5207 (Com. Car. Bur. 1984) (licensee granted temporary authority to operate its SBS-4 satellite at 101° W.L. to enable a customer to provide interim satellite service until 101° W. L. was ready to be occupied by a regularly assigned fixed-satellite licensee).

B. The Commission's STA Precedent is Fully Applicable to This Case

In the course of its reasoning, the Bureau drew several distinctions between this case and the Commission's STA grants in Newcomb and Mobile Datacom. None of these distinctions, however, is relevant or justifies a different result here.

First, the Bureau reasoned that in Newcomb and Mobile Datacom, the STAs involved "a relatively small number of commercial customers" EchoStar STA Denial at ¶ 8. In fact, however, both Newcomb and Mobile Datacom received temporary authority to operate up to 10,000 mobile earth stations -- a substantial number.^{5/} In any event, it is not clear why "[i]t would be far more difficult for millions of ordinary consumers to adapt to a reduction in service than it would be for a small number of commercial or governmental organizations." EchoStar STA Denial at ¶8. To the contrary, the "adaptation" would seem to be much more difficult in the case of Newcomb and Mobile Datacom: the subscribers of EchoStar would experience only a reduction in the number of programming options available to them. They would continue to be able to use their DBS dishes to receive up to 130 channels of programming. By contrast, the customers of Newcomb and Mobile Datacom would find themselves with terminals that they would no longer be able to use at all.^{6/}

The Bureau further stated that Mobile Datacom and Newcomb have the opportunity to demonstrate non-harmful interference to the Big LEO licensees, "permitting greater transition flexibility as Big LEO satellites deploy." Id. In fact, however, neither Mobile

^{5/} See Newcomb, 8 FCC Rcd. at 363; Mobile Datacom, 10 FCC Rcd. at 4553.

^{6/} Indeed, both Newcomb and Mobile Datacom received authority to construct and operate 10,000 terminals each. Further, Newcomb recently received additional temporary authority to add a link to its terminals, allowing a two-way service. Newcomb Communications, Inc., 11 FCC Rcd. 3084 (1996). This additional authority would seem to make the eventual transition process even more complex for Newcomb's customer compared to the temporary authority requested by EchoStar, which involves use of existing licensed receive-only terminals.

Datacom nor Newcomb was given much transition flexibility: they were both required to terminate operations "on the date on which a regularly licensed 'Big LEO' provider in the 1610-1626.5 MHz frequency band launches its first satellite." Mobile Datacom, 10 FCC Rcd. at 4554. See also Newcomb, 8 FCC Rcd at 3634 ("This authorization will terminate on the date on which a regularly licensed MSS/RDSS provider in the 1610-1626.5 frequency band launches the first satellite in the system").

Nor does it make any difference that EchoStar and Directsat are just beginning their license periods, whereas the satellites involved in Mobile Datacom and Newcomb were approaching the end of their licensed service lives, see EchoStar STA Denial at ¶ 8. EchoStar/Directsat will be fully prepared to cease operations upon the launch of Tempo's satellite to 119° W. L. Likewise, the certainty of harmful interference if EchoStar were to continue to operate over Tempo's channels after Tempo launches its satellite to the same location is not relevant. By the terms of the STA that EchoStar and Directsat have requested, EchoStar/Directsat will cease temporary operations upon Tempo's launch. Nor can Mobile Datacom and Newcomb be fairly read to apply only where the licensed future user of the frequencies is a non-geostationary satellite system. First, the standard of no harmful interference equally applies regardless of the satellite orbit. Second, the Commission has granted STAs even when the same orbital location was to be occupied by a regularly licensed geostationary satellite. See ARC, 5 FCC Rcd. at 5398. See also Columbia Communications Corporation, File No. 127-SAT-STA-96, Order and Authorization, DA 96-2139 (rel. Dec. 20, 1996) (STA extension granted pending negotiations with INTELSAT concerning the future use of geostationary orbital slot).

In short, the Commission's STA precedent warrants grant of EchoStar's and Directsat's requests. As will be shown below, the abandonment of this precedent is inappropriate in the circumstances of this case.

C. The Bureau Did Not Adequate Justify Its STA Denials

Notwithstanding its clear standards and practice, the Bureau erroneously denied EchoStar/Directsat's requests on two grounds. First, according to the Bureau, EchoStar's initial STA had been intended only as a "temporary bridge" allowing EchoStar to provide 16 channel service until the launch of Directsat's first satellite. With the launch of that satellite, "the original basis for the STA grant has disappeared" EchoStar STA Denial at ¶ 5, Directsat STA Denial at ¶ 5. Second, the Bureau reasoned that "the reduction in service to subscribers that would result when Tempo ultimately begins its own DBS operations would likely cause consumer confusion." Id. at ¶ 6. This reasoning misstates the basis for its earlier STA grant, creates new requirements not previously imposed as prerequisites to obtaining an STA, and disregards the Commission's spectrum efficiency policies in the satellite field.

1. The Public Interest Factors Supporting EchoStar's Initial STA Grant Are Still Present Today

The Bureau has unfortunately misread its earlier Order granting to EchoStar an STA to operate over 16 DBS channels at 119° W. L. That STA was not intended, as the Bureau now claims, only to provide a "temporary bridge." In fact, the principal reasons for granting EchoStar an STA are still present today and militate strongly in favor of granting the requested STAs today.

The Bureau did not grant to EchoStar an STA solely to provide a "temporary bridge" until the launch of Directsat's first satellite. The March 4, 1996 Order had used this phrase only to explain why a customer notification was not necessary. The Bureau observed that

the STA allowing operation over 16 channels would be "acting as a temporary bridge" to EchoStar/Direcstsat's ultimate 21 channels. See EchoStar STA Grant at ¶ 6. Therefore, customers were not likely to lose channel capacity and no notice was necessary. Now that Direcstsat's satellite has been launched, the reason for not requiring a customer notification is admittedly no longer applicable, and EchoStar/Direcstsat have been and remain willing to comply with such a requirement as a condition for receiving the requested STA's.

The primary reason for "[g]rant of this STA request . . . will . . . enable EchoStar to offer more competition and more programming more quickly in the DBS service." Id. at ¶ 1. The Order went on to cite to EchoStar's assertion that the STA "would serve the public interest by allowing its first satellite to offer a substantially expanded range of programming options, including educational and culturally diverse programming that could not otherwise be accommodated." Id. at ¶ 2. It also invoked EchoStar's claim that the STA would "allow it to better compete with DIRECTV and USSB, which together operate using substantially more channels than are assigned to EchoStar." Id. In the key paragraph setting forth its rationale, the Bureau agreed with EchoStar:

Grant of EchoStar's request may enable it to offer a more comprehensive and competitive initial DBS service to the public by making use of all of its available transponder capacity at 119° W.L. The Commission has recently reaffirmed its commitment to fostering competition in the multichannel video programming distribution market, and grant of this STA in the special circumstances of this case will further that objective.

Id. at ¶ 5 (footnote omitted).

The same need to foster MVPD entry and competition applies even more so today. EchoStar and Direcstsat are a success story vindicating the Commission's DBS regulatory policies and its efforts to promote competition in the MVPD market. These two entrepreneurial companies have persevered and launched two DBS satellites when much better financed DBS

proponents have failed. EchoStar and Directsat are now competing vigorously in the MVPD market. They are, however, seriously handicapped by the headstart of the joint venture of DIRECTV/USSB, which has access to substantially more spectrum than EchoStar/Directsat. In addition, EchoStar and Directsat will have to compete against the planned digital offerings of several hundreds of channels by cable operators -- whose dominance in the MVPD market the Commission has been asked by Congress to curb. The Commission's earlier promise to eliminate these capacity disparities by assigning additional CONUS channels to EchoStar/Directsat has not come to fruition. Although it is hardly enough, the requested STA would work toward temporarily equalizing the spectrum inequities through the use of frequencies unused by anyone else.

The Commission's earlier grant of an STA to EchoStar was made precisely in recognition of EchoStar/Directsat's need for such a level playing field. Contrary to the Bureau's latest Orders, Directsat's satellite still leaves EchoStar/Directsat with only 21 DBS channels versus DIRECTV/USSB's 32 channels and the substantially greater future digital capacity of cable operators.

2. The Proposed Notification Was an Inadequate Justification for the STA Denials

The Bureau's remaining other ground for its STA denials was a perceived concern with customer confusion. The Bureau observed that EchoStar/Directsat may "lose a significant portion of the programming provided by EchoStar/Directsat upon launch of Tempo's satellite," EchoStar/Directsat STA Denials at ¶ 6, and found that "the language proposed by [EchoStar/Directsat] to explain to subscribers the reduction in service will not suffice to overcome the resulting problems." Id. at ¶ 7 (footnote omitted).

A denial of an STA request on account of insufficiently clear notification language appears to be unprecedented. In the past, when the Commission has required an STA holder to notify its customers of the prospect of termination of service, it did so without even asking to review and approve the notification language. See e.g., Newcomb, 8 FCC Rcd. at 3634 (Newcomb "is required to inform its customers that service is being provided pursuant to a grant of interim authority and will terminate pursuant to the conditions specified in paragraph 15(a), above."); Mobile Datacom, 10 FCC Rcd. at 4553 (1995) ("We also require MDC to inform its customers that service will terminate upon the launch of a regularly licensed Big LEO satellite."); Newcomb II, 11 FCC Rcd. at 3086. As mentioned above, a denial of an STA on the basis of unclear notice language is all the more unjustified here because the risk of customer confusion is, if anything, less than in the cases of Newcomb and Mobile Datacom. In this case, consumers will only be facing a reduction of service. Indeed, because the additional channels will be used, in part, to provide pay-per-view offerings, part of this service reduction will only be a decrease in customers' pay-per-view choices. While the addition of pay-per-view options would add substantial temporary value to EchoStar/Direcstsat's service offerings, the eventual reduction in the number of such choices is unlikely to cause disruption or customer confusion.⁷¹ By contrast, in Newcomb and Mobile Datacom consumers were facing the prospect of total termination of service.

In any event, EchoStar/Direcstsat are willing to respond to the Bureau's concerns over the perceived lack of clarity in the previously proposed notification language. Specifically, EchoStar/Direcstsat submit the following language for the Bureau's consideration:

⁷¹ EchoStar and Direcstsat would also use the requested STAs to provide ethnic and culturally diverse programming. Indeed, with respect to such programming, the STAs would effectively be acting as a "temporary bridge" to the capacity that will eventually become available on the first satellite of Direct Broadcasting Satellite Corporation, scheduled to be completed in 1997.

Channels __, __ and __ (and pay-per-view options __, __ and __) are only temporarily available. The DISH Network's regulatory authority to provide these channels will expire on _____ [180 days from day of grant]. In addition, the DISH network may be required to cease transmitting programming over these channels earlier than that date. Therefore, the channels will cease to be available to you on or before _____ without any other prior notice. Upon such termination, we will adjust your subscription charge as appropriate to reflect the reduction in the number of channels available to you. If you have any questions, please call us toll-free at 1-800-333-DISH.

This more stringent language describes the loss of programming in the strongest terms as a definite future event that will happen, not as an eventuality that may occur (the old language, to which the Bureau objected, could be read as stating only that the DISH network might "be required to cease programming," see EchoStar Denial Order at ¶ 7). It further states unequivocally that this reduction in service will be without further prior notice, thus dispensing with the arguable vagueness of the prior formulation ("we will provide you notice as far in advance as reasonably practicable"). Nor does it even mention the Commission, thereby reducing the risk of burdening the agency with complaints.^{8/} EchoStar/Direcstsat believe that the proposed notice, as worded, is sufficiently clear to avert any customer confusion. Nevertheless, EchoStar/Direcstsat are willing to accept any further clarifications that the Bureau deems appropriate as conditions to their STAs.

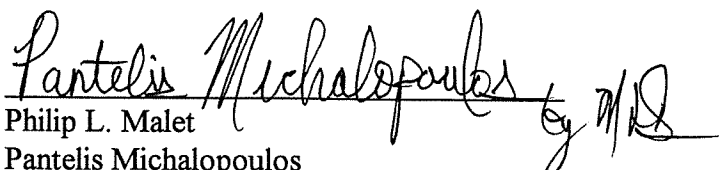
III. CONCLUSION

For the foregoing reasons, the Bureau should reconsider and grant the STA requests of EchoStar and Direcstsat, subject to any condition the Bureau considers appropriate,

^{8/} For the same reason, Tempo is not mentioned either, and Tempo's expressed concerns with receiving complaints (see EchoStar STA Denial at ¶ 7) are completely unfounded.

including the termination of operations upon Tempo's launch of a satellite to 119° W.L. and a clear customer notification requirement.

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I hereby certify that on this 26th day of December 1996, I caused copies of the foregoing pleading to be served by First Class U.S. Mail to the following:

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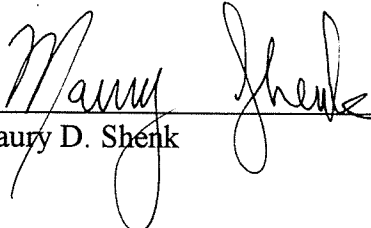
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