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JAN - 6 1997

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20054

Federal Communications Commission  
Office of Secretary

In the Matter of )  
)  
Directsat Corporation )  
)  
Application for Special Temporary )  
Authority to Operate a Direct )  
Broadcast Satellite System )  
)  
EchoStar Satellite Corporation )  
)  
Application for Special Temporary )  
Authority to Operate a Direct )  
Broadcast Satellite System )

File No. 138-SAT-STA-96

Received

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File No. 139-SAT-STA-96

Satellite Communications  
International Bureau

**OPPOSITION OF TEMPO SATELLITE, INC. TO  
CONSOLIDATED PETITIONS FOR RECONSIDERATION**

TEMPO SATELLITE, INC.

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January 6, 1997

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**OPPOSITION OF TEMPO SATELLITE, INC. TO  
CONSOLIDATED PETITIONS FOR RECONSIDERATION**

TEMPO Satellite, Inc. ("TEMPO"), by its attorneys, hereby submits its Opposition to the Consolidated Petitions for Reconsideration ("Petition") filed by EchoStar Satellite Corporation ("EchoStar") and Directsat Corporation ("Directsat") (collectively, "Petitioners") with respect to the above-referenced orders.<sup>1</sup> The International Bureau correctly denied Petitioners' requests for special temporary authority ("STA") to operate direct broadcast satellites ("DBS") on channels 22- 32 at 119° W.L., which are assigned to TEMPO, based upon the Bureau's determination that the proposed service is contrary to the public interest. Moreover, TEMPO recently filed a request for issuance of launch and operational authority

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<sup>1</sup> EchoStar Satellite Corporation, DA 96-1977 (Int'l Bur., rel. Nov. 26, 1996) ("EchoStar Order"); Directsat Corporation, DA 96-1978 (Int'l Bur., rel. Nov. 26, 1996) ("Directsat Order") (collectively, "Orders").

and is scheduled to launch its first satellite into 119° W.L. on February 27, 1997.<sup>2</sup> In these circumstances, the Orders denying Petitioners' temporary service authorizations are all the more justified. The Petition, therefore, should be denied.

## I. INTRODUCTION AND SUMMARY

EchoStar is authorized to operate an 11-channel DBS system on odd-numbered channels 1 through 21 at 119° W.L., and Directsat, EchoStar's affiliate, is authorized to operate a 10-channel DBS system on even-numbered channels 2 through 20 at 119° W.L.<sup>3</sup> On December 5, 1995, EchoStar requested temporary authority to operate odd-numbered channels 1 through 31. The STA would allow EchoStar to operate all 16 transponders on the satellite it launched in December 1995 until Directsat's system became operational in late 1996. The International Bureau approved the request, finding that

the STA is acting as a temporary bridge to enable EchoStar to make more efficient use of spectrum resources by operating on sixteen channels immediately, and 21 channels ultimately with Directsat.<sup>4</sup>

Since EchoStar was not expanding service beyond that covered by its combined authorizations, TEMPO did not object to the initial request for temporary authority, to the extent that it was otherwise in the public interest and would not interfere with TEMPO's operations.<sup>5</sup>

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<sup>2</sup> Accordingly, TEMPO is a party in interest. Furthermore, TEMPO timely objected to Petitioners' STA requests. See Consolidated Opposition of TEMPO Satellite, Inc., FCC File Nos. 139-SAT-STA-96/138-SAT-STA-6, filed August 16, 1996 ("TEMPO Opposition").

<sup>3</sup> EchoStar Satellite Corp., 7 FCC Rcd 1765 (1992); Directsat Corp., 8 FCC Rcd 7962 (Vid. Serv. Div. 1993).

<sup>4</sup> EchoStar Satellite Corp., 11 FCC Rcd 5351, 5352 (Int'l Bur. 1996) ("STA Grant").

<sup>5</sup> See Comments of TEMPO Satellite, Inc., FCC File No. DBS-88-01/37-SAT-STA-96 (Feb.

(Continued...)

On June 24, 1996, EchoStar and Directsat sought to broaden substantially the operating authority originally granted to EchoStar in the STA Grant by seeking to operate a 32-channel DBS service at 119° W.L. – i.e., one which would utilize over 50% more channels than they are authorized to provide. TEMPO opposed this request, demonstrating that the STA requests are barred by Section 309(f) of the Communications Act of 1934, as amended ("Communications Act") and, in any event, that the proposed operations could cause significant service disruptions and consumer confusion, contrary to the public interest.

By Orders released November 26, 1996, the Satellite and Radiocommunication Division of the International Bureau ("Bureau") denied EchoStar's and Directsat's STA requests, holding "that grant of the STA is not in the public interest."<sup>6</sup> The Bureau found that

EchoStar was originally granted an STA to use TEMPO's 119° W.L. channels as a 'temporary bridge' to provide 16 channel service until the launch of Directsat's USABSS-4 for combined 21 channel DBS service . . . Directsat has now launched USABSS-4 and is ready to provide the remaining channels necessary for the full complement of the assigned 21 channels for EchoStar/Directsat DBS service. *Based on this record, the original basis for the STA grant has disappeared, eliminating the support for continued authorization on channels that have been assigned to another licensee.*<sup>7</sup>

The Bureau also recognized that if it granted the STA requests and allowed temporary use of the additional channels, "the reduction in service that would result when TEMPO ultimately

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(...Continued)  
5, 1996).

<sup>6</sup> Directsat Order at ¶ 5; see also EchoStar Order at ¶ 5.

<sup>7</sup> EchoStar Order at ¶ 5 (emphasis added); see also Directsat Order at ¶ 5.

begins its own DBS operations would likely cause consumer confusion."<sup>8</sup> Finally, the Bureau held that EchoStar's and Directsat's "reliance on case precedent that authorizes conditional grant of STAs for use of spectrum is not persuasive" and is "inapposite to the circumstances presented in this case."<sup>9</sup>

On December 26, 1996, EchoStar and Directsat filed their Petition for Reconsideration of the Bureau's Orders. Petitioners contend "[t]hat the Bureau's denial of their STA requests were inconsistent with past practice and based upon incorrect factual findings."<sup>10</sup> The Orders, however, are in compliance with the Communications Act and fully consistent with Commission precedent. Petitioners have failed to satisfy the express requirements of Section 309(f) of the Communications Act. Petitioners also do not cite any other instance in which the Commission has granted an STA pursuant to Section 309(f) to provide a temporary service at the same orbital location and on the same frequencies that are authorized to another permittee.

Furthermore, the Orders are not based upon any incorrect factual findings, as Petitioners allege. The Bureau explicitly stated that since grant of EchoStar's initial STA was to serve only as a "temporary bridge" until Directsat's service was operational, there no longer is any basis to extend the STA.<sup>11</sup> Thus, the Bureau concluded that because of the significant consumer confusion which would result from "the reduction in service to subscribers . . .

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<sup>8</sup> EchoStar Order at ¶ 6; see also Directsat Order at ¶ 6.

<sup>9</sup> EchoStar Order at ¶ 8; see also Directsat Order at ¶ 8.

<sup>10</sup> Petition at ii.

<sup>11</sup> EchoStar Order at ¶ 5; see also Directsat Order at ¶ 5.

when TEMPO ultimately begins its own DBS operations," grant of Petitioners' STA requests would not be in the public interest.<sup>12</sup>

**II. THERE IS NO AUTHORITY IN THE COMMUNICATIONS ACT OR IN COMMISSION PRECEDENT TO SUPPORT GRANT OF PETITIONERS' STA REQUESTS**

**A. Petitioners Have Failed to Demonstrate That Their Requests Comply with Section 309(f) of the Communications Act, Upon Which They Relied Exclusively for Relief.**

In its pleadings below, TEMPO demonstrated that Section 309(f) of the Communications Act, upon which EchoStar and Directsat expressly and solely relied, does not support grant of their STA requests. Section 309(f) states that:

*When an application subject to subsection (b) has been filed, the Commission, notwithstanding the requirement of such subsection may, if the grant of such application is otherwise authorized by law and if it finds that there are extraordinary circumstances requiring temporary operations in the public interests and that delay in the institution of such temporary operations would seriously prejudice the public interest, grant a temporary authorization.*<sup>13</sup>

As the quoted language indicates, Section 309(f) specifies the circumstances in which the Commission may act on an application and grant temporary authority to the applicant without adhering to the public notice and other procedural requirements of Section 309. Thus, special temporary authority under Section 309(f) is available, consistent with the terms of the statute, *only to applicants for a Commission authorization*. EchoStar and Directsat clearly are not entitled to the relief they request because they fail to meet the basic eligibility requirements of

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<sup>12</sup> EchoStar Order at ¶ ¶ 5, 6; see also Directsat Order at ¶¶ 5, 6.

<sup>13</sup> 47 U.S.C. § 309(f) (emphasis added); see also 47 C.F.R. § 25.119(b).

the statute, i.e., they are not applicants for a construction permit for the facilities covered by the requests for special temporary authorization. Nor could they be applicants: Directsat and EchoStar seek to use the frequencies allocated to TEMPO.

In fact, the Court of Appeals for the District of Columbia Circuit has reversed a grant of an STA, finding that the Commission does not have inherent power to permit temporary operations.<sup>14</sup> The Court recognized that discontinuing service could cause hardship, but held that the Commission's authority to permit temporary service is limited by the language of the statute. Indeed, the Court found unpersuasive the Commission's "benign" assertion that "it is of course axiomatic that the continued operation of an existing service is in the public interest."<sup>15</sup> Absent satisfaction of all statutory criteria for an STA, the Commission simply is powerless to grant one.<sup>16</sup>

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<sup>14</sup> Folkways Broadcasting Co., Inc. v. Federal Communications Commission, 379 F.2d 447 (D.C. Cir. 1967).

<sup>15</sup> Id. at 449.

<sup>16</sup> See Mid-Michigan Broadcasting Corp., 38 FCC 2d 63 (1972) (holding that the Commission is barred from granting an STA where grant of the underlying application may not have been "otherwise authorized by law," as required by § 309(f)).

Petitioners claim that they somehow have an application pending for additional channels by virtue of requests for sixteen channel systems that were denied in part in Continental Satellite Corporation, 4 FCC Rcd 6292 (1989). Petition at 2. In Continental, the Commission merely stated that it would allocate any channels relinquished in the future to permittees with unfulfilled channel requests on a first-come, first-served basis upon demonstration of due diligence. Even if their claims for unfilled channel requests somehow survived Continental, however, they clearly were extinguished by the Commission in the December 1995 order adopting competitive bidding as a means by which DBS frequencies would be reallocated. See Revision of Rules and Policies for the Direct Broadcast Satellite Service, 11 FCC Rcd 9712 (1995). Indeed, Petitioners themselves acknowledge that "[t]he Commission's earlier promise," (if one in fact existed) to "assign[] additional CONUS channels to EchoStar/Directsat has not come to fruition." Petition at 10. See TEMPO

(Continued...)



EchoStar and Directsat ignore this fundamental flaw in their STA requests. Rather, Petitioners claim that the Commission's "standard for evaluating STA requests in the satellite area" is simply to determine whether the proposed "temporary operations . . . adversely affect other licensed satellites . . ." <sup>17</sup> The impact on other operators certainly is one of the factors considered by the Commission, but standing in isolation, the mere absence of interference, even if true, cannot justify an authorization that is barred by the Communications Act. Indeed, in the accompanying decision cited by Petitioners as the basis for the alleged "standard," the Bureau merely noted that "the Commission has been *mindful* to ensure that temporary operations do not adversely impact regularly licensed satellite systems . . ." <sup>18</sup>

In short, without any statutory basis for awarding the special relief EchoStar and Directsat seek, the Commission is powerless to grant it. The statutory provision on point, and indeed the very provision upon which Petitioners relied exclusively in their original requests, prohibits grant of special temporary authority in the absence of a pending application. Moreover, as discussed in greater detail below, EchoStar and Directsat have failed to demonstrate the existence of "extraordinary circumstances" justifying their proposed STAs, apart from their own desires to provide short-term expanded service on another party's channels, much less to demonstrate that delay in the institution of the proposed temporary

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(...Continued)  
Opposition at 3-6.

<sup>17</sup> Petition at 4 (citations omitted)

<sup>18</sup> Newcomb Communications, Inc., 8 FCC Rcd 3631, 3632 (Com. Car. Bur. 1993) (emphasis added).

operations could "seriously prejudice the public interest." Because the Petitioners cannot satisfy these requirements, the requested extraordinary relief is statutorily barred.

**B. The Petitioners Do Not Recite Any Error of Law in the Orders, Which Are in Complete Accord With Commission Precedent**

Petitioners claim that the failure to approve their proposed use of channels specifically allocated to TEMPO is "inconsistent with Commission precedent."<sup>19</sup> The cases cited by Petitioners, however, are inapposite. As TEMPO previously demonstrated, none of the cases relied upon by Petitioners granted temporary authority pursuant to Section 309(f) to operate a space segment to provide a new and otherwise unauthorized service.<sup>20</sup> None of the applicants, moreover, used an orbital slot and frequencies that were specifically assigned to another licensee or permittee, or provided service in excess of that allowed under their authorizations. In contrast, EchoStar and Directsat propose to provide DBS service, in excess of their allocations at 119° W.L., using 11 channels allocated to TEMPO at that orbital location, and despite the Bureau's previous holding that "the original basis for the STA grant has disappeared."<sup>21</sup>

For the first time, Petitioners now allege that "the Commission has previously allowed a DBS licensee to operate on channels assigned another company where the DBS channels in

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<sup>19</sup> Petition at 4-5.

<sup>20</sup> See Mobile Datacom Corp., 10 FCC Rcd 4552 (Int'l Bur. 1995); Newcomb Communications, Inc., 8 FCC Rcd 3631 (Com. Car. Bur. 1993); American Mobile Satellite Corp., 7 FCC Rcd 942 (1992); ARC Professional Services Group, Inc., 5 FCC Rcd 5398 (Com. Car. Bur. 1990); Satellite Business System, Mimeo No. 5207 (Com. Car. Bur. 1984).

<sup>21</sup> EchoStar Order at ¶ 5; Directsat Order at ¶ 5.

question were unused."<sup>22</sup> The Commission, in Hughes, however, granted the applicant "special temporary authority to operate its DBS-2A direct broadcast satellite at 110° W.L. for an eight week period commencing upon launch, *to test the satellite*."<sup>23</sup> The Commission concluded that grant of the STA would "serve the public interest, convenience, and necessity," by "permit[ting] Hughes to *conduct an in-orbit test* of DBS 2A without disrupting its existing service."<sup>24</sup> Thus, Hughes was authorized temporarily to operate on unused channels at a different orbital allocation merely to test its satellite in order to avoid disrupting existing customer service from the satellite located at the regularly authorized slot at 101° W.L. Hughes' STA was not granted merely to allow the operator to offer an expanded service. In contrast, Petitioners here seek to provide customer service utilizing channels that are 50% in excess of their authorizations.

The Bureau, moreover, correctly determined that the circumstances justifying temporary use of satellite facilities in prior cases were absent from Petitioners' requests, and therefore, that approval of their STAs would not further the public interest. In particular, the Bureau noted the greater potential for significant confusion to Petitioners' customers, who already number in the hundreds of thousands, upon the abrupt termination of over one-third of their service. In comparison, as the Bureau recognized, the customers in Mobile Datacom Corp. and Newcomb Communications, Inc. were a "relatively small number of commercial

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<sup>22</sup> Petition at 5 (citing 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)("Hughes")).

<sup>23</sup> Id. at 9339 (emphasis added).

<sup>24</sup> Id. (emphasis added).

customers, many of whom are U.S. government agencies."<sup>25</sup> In fact, Newcomb initially requested authority to operate 100,000 earth stations, but was authorized to operate only 10,000 units in order to reduce the risk to users.<sup>26</sup> In comparison, EchoStar currently has over 277,000 subscribers.<sup>27</sup> Petitioners claim that this distinction does not justify a different result, but they advance no substantive support for their contrary conclusion. Thus, there is no basis for disturbing the Bureau's determination that it would be more harmful and difficult for Petitioners' "ordinary consumers to adapt to a reduction in service than it would be for a small number of commercial or government organizations."<sup>28</sup>

Furthermore, the Bureau noted the "greater transition flexibility for Mobile Datacom and Newcomb as Big Leo satellites deploy."<sup>29</sup> Petitioners dispute this conclusion because the applicants' temporary authorizations terminated upon launch of the first Big Leo satellite.<sup>30</sup> The Bureau explicitly stated, however, that Mobile Datacom and Newcomb could continue service if they "can demonstrate that [their] operations will not interfere with Big LEO operations in the band or if all operating Big LEO system licensees have agreed to [their] operations."<sup>31</sup> In contrast, as Petitioners do not dispute, "[t]here is not a similar transition

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<sup>25</sup> EchoStar Order at ¶ 8; Directsat Order at ¶ 8.

<sup>26</sup> Newcomb Communications, Inc., 8 FCC Rcd at 3633.

<sup>27</sup> See Satellite Business News, dated December 4, 1996, at 1 (listing the number of EchoStar's subscribers as 277,065).

<sup>28</sup> EchoStar Order at ¶ 8; Directsat Order at ¶ 8.

<sup>29</sup> EchoStar Order at ¶ 8; Directsat Order at ¶ 8.

<sup>30</sup> Petition at 7.

<sup>31</sup> Mobile Datacom Corp., 10 FCC Rcd at 4553; see also Newcomb Communications, Inc., 8

(Continued...)

possibility between the co-located services of EchoStar [,Directsat] and TEMPO,"<sup>32</sup> since they must cease operation on TEMPO's channels altogether when TEMPO launches its satellite.

In short, the Commission's action on requests for special temporary authority are based on the "specific circumstances" of each case.<sup>33</sup> Petitioners have failed to point to any error of fact or law committed by the Bureau in considering their requests. Nor have they adequately explained why the crucial distinctions between their proposal and the "precedents" upon which they rely do not justify the result reached by the Bureau.<sup>34</sup> Rather, Petitioners merely disagree with the Bureau's particular balancing of interests, by which it found that the extraordinary relief requested here to use frequencies allocated to another permittee was unsupported in law. Moreover, as explained below, Petitioners failed to demonstrate that the Bureau erred in finding that grant of the STA requests would cause significant customer confusion and, therefore, would be contrary to the public interest.

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(...Continued)  
FCC Rcd at 3663.

<sup>32</sup> EchoStar Order at ¶ 8; see also Directsat Order at ¶ 8.

<sup>33</sup> EchoStar Order at ¶ 9; Directsat Order at ¶ 9. Contrary to Petitioners' unsupported allegations, the Bureau also justifiably distinguished Mobile Datacom and Newcomb based upon the facts that they "involved services proposed for use on satellites approaching the end of their licensed service lives and contain other limitations on the services provided, based on the specific facts of those cases." Id. at ¶ 8; see Petition at 7.

<sup>34</sup> See Petition at 6-7.

**III. THE BUREAU CORRECTLY DETERMINED THAT GRANT OF PETITIONERS' STA REQUESTS WOULD CAUSE SIGNIFICANT CUSTOMER CONFUSION AND WOULD NOT SERVE THE PUBLIC INTEREST**

Petitioners accuse the Bureau of "misstat[ing] the basis for its earlier STA grant, creat[ing] new requirements not previously imposed as prerequisites to obtaining an STA, and disregard[ing] the Commission's spectrum efficiency policies in the satellite field."<sup>35</sup> Thus, the Petitioners, ignoring the significant differences between EchoStar's original STA and their instant desire to increase operating authority by 50%, rely essentially on competitive interests and private business goals to justify their requests. However, Petitioners fail to demonstrate any "*extraordinary circumstances* requiring temporary operations" or that delay "would *seriously prejudice* the public interest . . . ," as required by Section 309(f).<sup>36</sup> In fact, as the Bureau correctly concluded, their proposal would cause significant consumer harm and confusion, which cannot be outweighed by any incremental increase in temporary service.

**A. Grant of EchoStar's First STA Request Does Not Justify Reconsideration of the Bureau's Order.**

Petitioners attempt to justify the Petition based upon the Bureau's initial grant of temporary authority to EchoStar to use five of TEMPO's frequencies until Directsat's service became operational. In particular, Petitioners allege that "the principal reasons for granting EchoStar an STA" -- such as increasing EchoStar's programming options -- "are still present today and militate strongly in favor of granting the requested STAs today."<sup>37</sup> Contrary to

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<sup>35</sup> Petition at 8.

<sup>36</sup> 47 U.S.C. § 309(f) (emphasis added).

<sup>37</sup> Petition at 8.

Petitioners' assertion, however, there are no legal or factual similarities between the requests that could support reconsideration of the Orders.

First, the International Bureau correctly held that with the launch of Directsat's satellite, "the original basis for the STA grant has disappeared."<sup>38</sup> EchoStar and Directsat are now operating with their fully-authorized complement of channels. A mere desire for additional channels (shared by every other DBS permittee) is not an adequate basis for justifying an STA under Section 309(f) and does not outweigh the harm and confusion consumers would experience when over one-third of their channels are abruptly terminated.<sup>39</sup>

Second, Petitioners claim that the Bureau ignored its earlier finding that an STA would allow EchoStar to expand programming and "better compete" with other DBS providers.<sup>40</sup> Petitioners fail to recognize, however, that the underlying consideration of the Bureau's initial decision was to enable EchoStar to more quickly put channels in service, up to its maximum authorization of 21 (not the 32 presently requested) channels at 119° W.L. Nor have Petitioners explained why their 21-transponder system, allegedly offering 124 channels of programming,<sup>41</sup> is not sufficient to be an effective competitor.

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<sup>38</sup> EchoStar Order at ¶ 5; Directsat Order at ¶ 5.

<sup>39</sup> Nor can Petitioners claim that their proposed service acts as a "temporary bridge" until the launch of Direct Broadcasting Satellite Corporation's ("DBSC") first satellite. See Petition at 11 n.7. As stated below, TEMPO is scheduled to launch its satellite on February 27, 1997 – at least 10 months prior to the proposed completion of DBSC's satellite. Thus, DBSC's contemplated future service in no way alleviates the Bureau's concerns regarding "consumer confusion" upon the imminent termination of Petitioners' service. See EchoStar Order at ¶¶ 5, 6; Directsat Order at ¶ ¶ 5,6.

<sup>40</sup> Petition at 9.

<sup>41</sup> See Directsat Corporation's Request for Special Temporary Authority, FCC File No. 138-

(Continued...)

The Commission, moreover, has previously found that while prompt introduction of a service is a desirable goal, the commencement of new service, by itself, cannot justify an authorization where the proposal otherwise lacks legal authority. Thus, the Commission denied the application of Advanced Communications Corporation to extend its construction permit even though, through arrangements with an affiliate of TEMPO, it could have commenced service in only a matter of months.<sup>42</sup>

**B. TEMPO's Scheduled February Launch Further Supports Denial of Petitioners' STA Requests**

In any event, the facts have changed substantially since EchoStar's initial request, and denial is even more appropriate now. Not only has Directsat launched its satellite, but TEMPO has applied for authority to launch its satellite on February 27, 1996 – just seven weeks from now.<sup>43</sup> It is highly unlikely, therefore, that if the Bureau reconsiders the Orders, Petitioners could offer the proposed service. Even if some service would theoretically be possible, Petitioners have not demonstrated how any such minimal service gains could overcome the significant risks of program disruption and consumer confusion that would inevitably result.

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(...Continued)

SAT-96, filed June 24, 1996, at 3; EchoStar Satellite Corporation's Request for Extension of Special Temporary Authority FCC File No. 139-SAT-STA-96, filed June 24, 1996, at 3.

<sup>42</sup> Advanced Communications Corp., 11 FCC Rcd 3399 (1995).

<sup>43</sup> Thus, contrary to Petitioners' assertion, the Bureau's decisions would *not* allow eleven transponders to "lie idle for an indefinite period of time." Petition at ii.



Petitioners represent that they would "cease operations *immediately* upon TEMPO's launch of a satellite to 119° W.L."<sup>44</sup> Yet, despite the express order from the Bureau to cease operations "effective immediately," EchoStar requested an additional thirty days to suspend operations on TEMPO's channels.<sup>45</sup> Thus, EchoStar claimed that "an orderly transfer will take a period of several weeks to effectuate . . . ," noting that "the transition is more complex than a mere flip of a switch . . . entail[ing] changes to the set-top box . . . [and] requir[ing] adjustments to EchoStar's compression, conditional access and electronic program guide systems."<sup>46</sup> Given the time EchoStar consumed to terminate service on only five of TEMPO's channels, Petitioners certainly have not justified their requests to double the number of channels (assigned to TEMPO) on which they seek to operate. Moreover, the Commission should not risk a second major service disruption to consumers within a few months. Neither the Commission nor TEMPO should be required to bear the burden of the customer complaints that would inevitably result.<sup>47</sup>

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<sup>44</sup> Petition at 4 (emphasis added).

<sup>45</sup> EchoStar Order at ¶ ¶ 10, 11.

<sup>46</sup> Letter to Thomas Tycz, Chief, Satellite and Radiocommunication Division, from Pantelis Michalopoulos, Attorney for EchoStar Satellite Corporation, dated December 2, 1996.

<sup>47</sup> See EchoStar Order at ¶ ¶ 6, 7; Directsat Order at ¶ ¶ 6, 7. No customer notification, even the modified version proposed by Petitioners, could prevent the customer confusion that would inevitably result when service is terminated in such a short time. See Petition at 12.

#### IV. CONCLUSION

EchoStar and Directsat have failed to advance any legitimate reasons for the Bureau to reconsider its decision. The Orders are consistent with past Commission practices and fully in compliance with the Communications Act. Moreover, the Orders are not based upon any incorrect factual findings. The Bureau explicitly stated that grant of EchoStar's initial STA was to serve only as a "temporary bridge" until Directsat's service was operational. Now, when confronted with an additional request for more channels than EchoStar and Directsat ever have been authorized to use, the Bureau correctly concluded that with the launch of Directsat's satellite, "the original basis for the STA grant has disappeared."

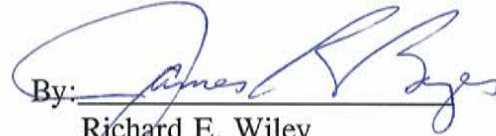
Moreover, as TEMPO demonstrated below, there is no predicate for Commission action here: no applications are pending for the service which Petitioners seek to provide, as required by the express language of Section 309(f), the provision upon which they relied. Nor do Petitioners cite any case in which the Commission has granted an STA pursuant to Section 309(f) to provide a temporary service at the same orbital location and on the same frequencies that are authorized to another permittee.

EchoStar and Directsat also fail to demonstrate the "extraordinary circumstances" and "serious[] prejudice" to the public interest that Section 309(f) requires. Indeed, TEMPO has requested authority to launch its satellite into 119° W.L. in just seven weeks, further supporting the wisdom of the Bureau's Orders. Thus, grant of Petitioner's request to operate on TEMPO's channels for such a minimal period, if at all, would only cause substantial consumer confusion and harm, rather than serve the public interest. Accordingly, TEMPO

respectfully requests that the Bureau deny EchoStar's and Directsat's Consolidated Petitions for Reconsideration.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of January, 1997, I caused copies of the foregoing "Opposition of TEMPO Satellite, Inc. to Consolidated Petitions for Reconsideration" to be served via hand-carry to the following:

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