

October 25, 2001

BY HAND DELIVERY

Magalie Roman Salas
Secretary
Federal Communications Commission
International Bureau - Satellites
P.O. Box 358210
Pittsburgh, PA 15251-5210

**Re: Application for Special Temporary Authority to Operate a
Direct Broadcast Satellite Over the Even-Numbered Channels
at the 148° W.L. Orbital Location, File No. _____**

EXPEDITED CONSIDERATION REQUESTED

Dear Ms. Salas:

Pursuant to Section 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(f), EchoStar Satellite Corporation (“EchoStar”) hereby requests Special Temporary Authority (“STA”) to move its EchoStar 2 satellite from the 119° W.L. orbital location to the 148° W.L. orbital location and operate it over the 16 even-numbered channels at 148° W.L. (8 of which are already licensed to EchoStar) for a period of 180 days. Enclosed is an FCC Form 159 and a check in the amount of \$135.00 to cover applicable filing fees. Also enclosed is an additional copy, which we ask that you date stamp and return with our messenger.

EchoStar 2 is now operating as an in-orbit spare satellite at the 119° W.L. orbital location. EchoStar has deployed other satellites (currently, EchoStar 4 and 6) that use all of the 21 DBS channels licensed to EchoStar at that location. The exigencies of the must-carry requirements, which commence on January 1, 2002, will create an unprecedented strain on EchoStar’s satellite and spectrum resources. As the Commission is aware, EchoStar must carry all qualified broadcast stations in each and every market where EchoStar now offers local network stations and in every new market that EchoStar may want to start serving. These rules necessitate EchoStar activating as much satellite capacity as possible. Specifically, EchoStar can no longer afford to maintain an in-orbit spare at 119° W.L., and under separate cover, concurrent with this filing, has requested authority to move the EchoStar 2 satellite to the 148° W.L. orbital location (“Modification Application”).

EchoStar has operating authority for 24 DBS channels (all 16 odd-numbered channels and even-numbered channels 2 through 16) at 148° W.L. EchoStar already operates the 16 odd-numbered channels with its EchoStar 1 satellite, which moved to 148° W.L. in the year 2000. The Modification Application requests authority for EchoStar 2 to operate over the even-numbered channels 2 through 16. By the instant request, in order to expedite use of the frequencies, EchoStar requests special temporary authority for these same channels as well as even-numbered channels 18 through 32, which are not licensed to any entity.

The proposed relocation of EchoStar 2 is part of a broader effort on EchoStar's part to comply with the must-carry rules. That effort includes the launch of EchoStar 7 and 8, two new spot beam satellites. Circumstances beyond EchoStar's control, however, could delay the launch of EchoStar 7. Out of an abundance of caution, EchoStar seeks to realign its fleet to ensure compliance with the must carry rules.

The STA request is in the public interest, since it will move EchoStar 2 from in-orbit spare status to fully operational status. It also will not cause harmful interference into any authorized user of the spectrum. In fact, there is no other company that operates a DBS satellite or is even licensed for such operation at or near the 148° W.L. orbital location. In any event, EchoStar is ready to terminate its temporary operations immediately upon notification of harmful interference by a licensed user of the spectrum.

To be operational on January 1, 2002 while maintaining a sufficient supply of fuel, EchoStar 2 must commence its move immediately. EchoStar therefore respectfully requests Commission action at the earliest possible date, but no later than Friday, November 16, 2001.

I. BACKGROUND

EchoStar has operated EchoStar 2 at 119° W.L. under a license granted on November 25, 1996. *See* Letter from Donald H. Gips, Bureau Chief, Federal Communications Commission, to DirectSat Corporation, DA 96-1982 (Nov. 26, 1996) (granting license for EchoStar 2 and enclosing terms of license); File No. SAT-MOD-19990419-00043. EchoStar 2 initially operated over 10 DBS channels (even-numbered channels 2-20) at that orbital location. It was eventually relegated to in-orbit spare status after the move of EchoStar 4 to 119° W.L. and the launch of EchoStar 6 to that slot. *See* Letter to David K. Moskowitz, Senior Vice President and General Counsel of EchoStar Satellite Corporation from Chief, FCC Satellite and Radiocommunication Division (Aug. 10, 2000); *see also* *EchoStar Satellite Corporation Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, Launch and Operation Authority; Request for Waiver of Section 100.21 of the Commission's Rules*, 15 FCC Rcd. 23636 (2000).

In January 1996, EchoStar was the winning bidder in a Commission auction for 24 channels at 148° W.L. *See* *EchoStar DBS Corporation Wins 24 DBS Channels at the 148 Degree Orbital Location with a High Bid of \$52,295,000*, FCC Press Release (Jan. 26, 1996). In

December 1996, the Commission authorized EchoStar to construct, launch and operate its DBS system at 148° W.L. See *In Re Application of EchoStar DBS Corporation*, 12 FCC Rcd. 11946 (1996); *In Re Application of EchoStar DBS Corporation*, 11 FCC Rcd. 16291 (1996). EchoStar moved its 16-transponder EchoStar 1 satellite to 148° W.L. in 2000, and currently operates the 16 even-numbered channels at that orbital location authorized to EchoStar at 148° W.L. using EchoStar 1.

II. THE PROPOSAL IS IN THE PUBLIC INTEREST

This STA request is in the public interest. EchoStar 2 is not needed at 119° W.L. except as an in-orbit spare, and is not operational at that location. This proposal will move it from its now “dormant” status to full operational status for all of its 16 transponders. The instant request will therefore result in the use of 16 currently unused DBS channels at a western orbital location, to the benefit of U.S. consumers. In addition, the move is essential to EchoStar’s efforts to provide local broadcast service to as many cities as feasible. Under the must-carry scheme, the decision of a satellite carrier to provide even one popular local station in a particular city carries with it a manifold burden on the spectrum available to the carrier – the obligation to carry all qualified stations in that market. See 47 C.F.R. 76.66. This poses a daunting strain on EchoStar’s satellite capacity. To meet this need for capacity, EchoStar plans to launch two new satellites, EchoStar 7 and 8, at a cost of roughly a half billion dollars. While the earliest EchoStar 7 will launch is late December of this year, certain factors beyond EchoStar’s control could contribute to the delay of this launch, including delays in delivery of the satellite or difficulties in procuring adequate launch insurance. The STA EchoStar seeks here will help it meet its must carry obligation, especially in light of the risk that EchoStar 7’s launch may be delayed. Specifically, EchoStar seeks to use the frequencies at 148° W.L. to support DBS services and backhaul capacity allowing the transfer of programming streams between EchoStar’s Gilbert, AZ and Cheyenne, WY uplink facilities.¹ The unappealing alternative would be to drop local service in markets where EchoStar currently carries local television stations, something EchoStar hopes to avoid.

This STA request, in addition to encompassing the frequencies won by EchoStar at auction, extends to 8 channels for which EchoStar does not have a firm license. The only alternative to use of these channels under an STA is to leave those frequencies fallow. Thus, granting the STA would further the public interest. In fact, the Commission has resolved this question dispositively by granting EchoStar an STA to operate at 61.5° W.L. over channels licensed to another company as well as over unlicensed channels. See *Direct Broadcasting*

¹ Backhaul operation is explicitly included in EchoStar’s DBS authorizations under the Commission’s policy of flexibility in allowing “non-conforming uses” of DBS resources. See *In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service*, 11 FCC Rcd. 9712, 9717-18 (1995).

Satellite Corp., DA 98-544 (rel. Mar. 21, 1998). As in that case, shutting down the temporary operations at issue here can be immediate. *See id.* at ¶ 8. Moreover, unlike in that case, the channels in question here are not licensed to any one else, and are not likely to be used by any one for several years, making the case for an STA here all the stronger.²

III. THE PROPOSED OPERATION WILL NOT CAUSE HARMFUL INTERFERENCE

No entity other than EchoStar has authority to conduct DBS operations from the 148° W.L. slot. Therefore, the requested operational authority will not cause any harmful interference to any authorized user of the spectrum. *See, e.g., In the Matter of Newcomb Communications, Inc.*, 8 FCC Rcd. 3631, 3633 (1993); *In the Matter of Columbia Communications Corporation*, 11 FCC Rcd. 8639, 8640 (1996).

EchoStar 2 and EchoStar 1 are technically identical DBS satellites, and the Commission has already found that EchoStar 1 will not cause harmful interference from the 148° W.L. orbital location. The attached Technical Annex provides additional evidence in that regard.

As for EchoStar 2's TT&C operations in the extended C-band, the move would, if anything, alleviate any risk of interference, since it would place the satellite in a less congested part of the geostationary arc. In any event, EchoStar 2 uses only a narrow sliver of that spectrum for its TT&C communications, and coordination should be straightforward. EchoStar commits to discontinuing any offending operations upon notification of harmful interference by an authorized user of the spectrum.

IV. SECTION 304 WAIVER

In accordance with Section 304 of the Communications Act of 1934, 47 U.S.C. § 304, EchoStar hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum because of the previous use of the same, whether by license or otherwise.

V. CONCLUSION

For the foregoing reasons, EchoStar respectfully requests Special Temporary Authority to move its EchoStar 2 satellite to the 148° W.L. orbital location and operate it at 148° W.L. for a period of 180 days.

² Indeed, the practical experience from the STA given to EchoStar at 61.5° in 1998 provides additional reassurance for the Commission. Even though that STA has partially expired for the channels licensed to Dominion, that expiration has caused no service disruption or customer confusion whatsoever.

Ms. Magalie Roman Salas
October 25, 2001
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Respectfully submitted,

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