

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
EchoStar Satellite L.L.C.)
)
Application for Renewal of Special)
Temporary Authority to Operate)
EchoStar IV at the 157° W.L. Orbital)
Location on Alternative Channels)
_____)

File No. _____

**REQUEST OF ECHOSTAR SATELLITE L.L.C.
FOR RENEWAL OF SPECIAL TEMPORARY AUTHORITY**

Pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309, EchoStar Satellite L.L.C. (“EchoStar”) hereby requests renewal of its Special Temporary Authority (“STA”) to operate the EchoStar IV satellite at the 157° W.L. orbital location over channels 7 and 11, instead of the licensed channels 3 and 5 for up to 180 days, pending the approval of EchoStar’s pending application requesting the same permanent operational authority. As discussed below, grant of this renewal STA application is necessary to permit EchoStar IV to operate on three channels at the 157° W.L. orbit location, and would strongly serve the public interest. Simply stated, subsequent to being assigned channels 1, 3 and 5, EchoStar has determined that its ailing EchoStar IV satellite cannot operate on all three of the assigned channels simultaneously. On December 10, 2003, the Commission granted EchoStar’s request to operate the EchoStar 4 satellite at 157 W.L. using channels 7 and 11 (instead of the

licensed channels 3 and 5) subject to conditions for 60 days.¹ This authorization expires on February 15, 2004. No one else is providing DBS service from 157° W.L. at present. Since the total number of channels will be the same, the grant of this request for renewal of STA will not prejudice any other company interested in operating at that location in the future.

I. BACKGROUND

In August 1989, the Commission granted EchoStar authority to construct a DBS system that would use 11 “eastern” and 11 “western” channels. Under the process that applied at the time, the assignment of specific channels was subject to the first prong of due diligence – completion of contracting. While the Commission assigned 11 specific eastern channels (at 119° W.L.) to EchoStar in 1992, it required EchoStar to submit additional information regarding its contract for western channels and the question remained outstanding for over a decade.²

In May 2002, the Commission found that EchoStar had satisfied the first prong of due diligence for the 11 western channels, and gave EchoStar 10 days to specify its preferred channel assignments at one western orbit location.³ On May 28, 2002, EchoStar submitted a letter notifying the Commission of its selection of the odd-numbered Channels 1-21 at the 157° W.L. orbit location as the channel assignment for its western DBS permit and providing the

¹ See File No. SAT-STA-20030903-00301 (granted Dec. 10, 2003) (Exhibit 1).

² See *EchoStar Satellite Corporation, Assignment of Direct Broadcast Satellite Orbital Positions and Channels*, 7 FCC Rcd. 1765, 1771 (1992) (stating that a western orbit position and channel assignment cannot be made to EchoStar at this time and affording EchoStar additional time to demonstrate due diligence with regard to its proposed western satellite).

³ See *EchoStar Satellite Corporation for Assignment of Direct Broadcast Satellite Orbital Position and Channels*, Memorandum Opinion and Order, File No. DBS-88-01, DA 02-1163 (Sat. Div., Int’l Bur.) (rel. May 16, 2002); see *id.* at ¶¶ 7, 10.

rationale for its selection.⁴ Notwithstanding this selection, the Commission directed EchoStar to select one of its original orbital locations, either 148° W.L. or 175° W.L.⁵ In response, EchoStar requested the use of eight remaining channels at 148° W.L., which it had previously been using pursuant STA.⁶ EchoStar subsequently requested authority to operate its three remaining western channels at the 157° W.L. orbital location using the EchoStar IV satellite, which is not operating at full capacity because of several transponder anomalies.⁷

On May 7, 2003, the Commission authorized EchoStar to operate EchoStar IV at the 157° W.L. orbital location over channels 1, 3 and 5.⁸ The Commission afforded EchoStar 120 days “to move EchoStar 4 from the 119° W.L. orbital location to the 157° W.L. orbital location,” and required EchoStar to notify the Commission within 10 days of the relocation.⁹

⁴ See Letter from Pantelis Michalopoulos and Carlos M. Nalda, Counsel for EchoStar Satellite Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission (May 28, 2002). In June 1998, DIRECTV Enterprises, Inc. surrendered its 27 western channel assignments at the 157° W.L. orbital location. See Letter from Gary M. Epstein, Counsel for DIRECTV Enterprises, Inc. to Regina Keeney, Chief, International Bureau, Federal Communications Commission (May 22, 1998).

⁵ See Letter from Cassandra C. Thomas, Deputy Chief, Satellite Division, to Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation (December 24, 2002).

⁶ See Letter from David R. Goodfriend, Director, Legal and Business Affairs, EchoStar Satellite Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 3, 2003). EchoStar separately filed an application for review of the decision directing EchoStar to select one of its original orbit locations, either 148° W.L. or 175° W.L., which would have deprived EchoStar of three of its western channels. See EchoStar Satellite Corporation, Application for Review (Jan. 23, 2003).

⁷ See Letter from David R. Goodfriend, Director, Legal and Business Affairs, EchoStar Satellite Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission (Feb. 11, 2003).

⁸ See *EchoStar Satellite Corporation for Assignment of Direct Broadcast Satellite Orbital Position and Channels*, Order, File No. DBS-88-01, DA 03-1510 (Sat. Div., Int’l Bur.) (rel. May 7, 2003).

⁹ See *id.*, ¶ 12.

The EchoStar IV satellite was duly relocated to the 157° W.L. orbit location on July 22, 2003, well within the time frame required by the Commission, and EchoStar has timely notified the Commission of this relocation.

Since EchoStar IV's relocation to 157° W.L., it has become apparent that the satellite cannot operate simultaneously on all three of the channels that were assigned to EchoStar at that location. Based on a detailed analysis of remaining operational amplifiers and switching constraints, it is clear that the transponders associated with the assigned frequencies are not sustainable. For example, with respect to channel 5, all three available redundant TWT paths have failed and there is insufficient input/output switching available to use other TWTs for that channel. However, because other transponders on the satellite remain functional, EchoStar IV is capable of providing DBS service on other channels. On September 3, 2003, EchoStar filed an application requesting STA to operate over channels 7 and 11, instead of the licensed channels 3 and 5 at the 157° W.L. orbital location.¹⁰ On December 10, 2003, the Commission granted EchoStar the requested STA. The STA expires on February 15, 2004.

II. GRANT OF ECHOSTAR'S REQUEST FOR SPECIAL TEMPORARY AUTHORITY WILL NOT CAUSE ANY HARMFUL INTERFERENCE AND WILL SERVE THE PUBLIC INTEREST

The Commission has a long-standing policy of granting Special Temporary Authority where such authorization will not cause harmful interference and will serve the public interest, convenience and necessity. *See, e.g., In the Matter of American Telephone & Telegraph Company*, 8 FCC Rcd. 8742, 8742 (1993) ("Granting the AT&T request will serve the public interest, convenience and necessity . . . [It] will allow AT&T to continue to provide service to its

¹⁰ See supra note 1.

TELSTAR 301 customers while ensuring that TELSTAR 301 is fully operational before it is placed into service.”); *see also In the Matter of Hughes Communications Galaxy, Inc.*, 10 FCC Rcd. 11024, 11024 (1995) (“Grant of this modification will provide an opportunity for the public to continue receiving services from Galaxy III . . . grant of Hughes’s application will serve the public interest, convenience and necessity.”); *In the Matter of Columbia Communications Corporation*, 11 FCC Rcd. 8639, 8640 (1996) (“Granting Columbia’s request, subject to a non-interference condition, will serve the public interest, convenience and necessity . . . [It] presents Columbia with an opportunity to provide immediate interim service . . . reliev[ing] the present shortage of U.S. domestic and transAtlantic C-band capacity and also allow[ing] Columbia to provide expanded service options to new and existing customers.”); *In the Matter of the Applications of Newcomb Communications, Inc.*, 8 FCC Rcd. 3631, 3633 (1993).

EchoStar is the only entity authorized to conduct DBS operations from the 157° W.L. orbit location. Thus, the requested renewal of STA will not cause any harmful interference to any authorized user of the spectrum. In addition, permitting EchoStar IV to use alternative channels at 157° W.L. pursuant to STA will allow EchoStar to continue using the total number of licensed channels at that location, to the benefit of U.S. consumers. Conversely, without the renewal of authority requested here, EchoStar would have to operate over fewer channels than the number licensed. Thus, the requested renewal of STA will enable EchoStar to provide more services to its customers (up to the number of licensed channels) than would otherwise be the case, including pay-per-view, international, business television and other specialized services.

Rather than limiting EchoStar to its original channel assignment and effectively precluding the use of two-thirds of EchoStar’s assigned spectrum at the 157° W.L. orbital location, the public would be best served by allowing the EchoStar IV satellite to continue

operating on a temporary basis over alternative channels that it can actually utilize. At the same time, because the total number of channels to be temporarily used at that location remains the same (and, indeed, EchoStar is requesting the substitution of odd-numbered channels for other odd-numbered channels), this request creates no prejudice whatsoever for other companies interested in operating at the 157° W.L. orbital location in the future. For all of these reasons, grant of the instant STA renewal request would strongly serve the public interest.

III. SECTION 304 WAIVER

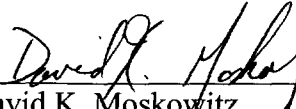
In accordance with Section 304 of the Communications Act of 1934, 47 U.S.C. § 304, EchoStar hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum because of the previous use of the same, whether by license or otherwise.

IV. CONCLUSION

For the foregoing reasons, EchoStar hereby respectfully requests renewal of its Special Temporary Authority to operate the EchoStar IV satellite using channels 7 and 11, instead channels 3 and 5 licensed to EchoStar at the 157° W.L. orbit location.

Respectfully submitted,

EchoStar Satellite LLC



David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Satellite LLC
9601 S. Meridian Boulevard
Englewood, CO 80112
(303) 723-1000

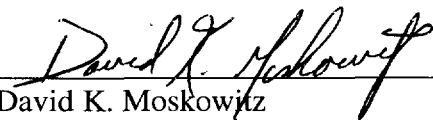
Dated: February 6, 2004

ANTI-DRUG ABUSE ACT CERTIFICATION

Pursuant to Section 1.2002 of the Commission's Rules, 47 C.F.R. Section 1.2002 (1997), Applicant certifies that neither Applicant nor any of its shareholders, nor any of its officers or directors, nor any party to this Application, are subject to a denial of Federal benefits pursuant to authority granted in Section 5301 of the Anti-Drug Abuse Act of 1988.

Respectfully submitted,

EchoStar Satellite LLC

By: 
David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Satellite LLC
9601 S. Meridian Boulevard
Englewood, CO 80112
(303) 723-1000

Dated: February 6, 2004

EXHIBIT 1

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

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EchoStar Satellite Corporation
EchoStar IV
SAT-STA-20030903-00301

September 3, 2003

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
International Bureau - Satellites
P.O. Box 358210
Pittsburgh, PA 15251-5210

Received
SEP 16 2003
Policy Branch
International Bureau

Re: Request of EchoStar Satellite Corporation for Special Temporary Authority to Operate EchoStar IV at the 157° W.L. Orbital Location On Alternative Channels; File No. _____

Dear Ms. Dortch:

On behalf of EchoStar Satellite Corporation ("EchoStar"), enclosed please find for filing an original and nine copies of an application for Special Temporary Authority to operate the EchoStar IV satellite on alternative channels at the 157° W.L. orbital location. Also enclosed is a check in the amount of \$145.00 for the applicable filing fee, a completed FCC Form 159, and an additional copy, which we ask you to date stamp and return with our messenger.

Please do not hesitate to contact me should you have any questions.

Respectfully submitted,

P. Michalopoulos / PM

Pantelis Michalopoulos
Counsel for EchoStar Satellite Corporation

Enclosures

cc: Jennifer Gilsonan
Selina Khan
FCC Columbia Operations Center



File# SAT-STA-20030903-00301
With Attached Conditions
Call Sign _____ Grant Date 12/10/03
(or other identifier)
Term Dates
From 12/17/03 To: 2/15/04
Approved: Jennifer M. Gilsonan

**Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
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Application for Special Temporary)
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**REQUEST OF ECHOSTAR SATELLITE CORPORATION
FOR SPECIAL TEMPORARY AUTHORITY**

Pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309, EchoStar Satellite Corporation ("EchoStar") hereby requests Special Temporary Authority ("STA") to operate the EchoStar IV satellite at 157° W.L. over channels 7 and 11 instead of the licensed channels 3 and 5 for up to 180 days. As discussed below, grant of the STA is necessary to permit EchoStar IV to operate on three channels at the 157° W.L. orbit location, and would strongly serve the public interest. Simply stated, subsequent to being assigned channels 1, 3 and 5, EchoStar has determined that its ailing EchoStar IV satellite cannot operate on all three of the assigned channels simultaneously, and the only logical combinations of channels that will allow EchoStar to use a total of three channels, with at least one of which being an assigned channel, at that slot are: (a) 1, 7 and 11; (b) 1, 15 and 19; or (c) 3, 7 and 11. No one else is providing DBS service from 157° W.L. at present. Since the total number of

channels will be the same, the grant of this request will not prejudice any other company interested in operating at that location in the future.

I. BACKGROUND

In August 1989, the Commission granted EchoStar authority to construct a DBS system that would use 11 “eastern” and 11 “western” channels. Under the process that applied at the time, the assignment of specific channels was subject to the first prong of due diligence – completion of contracting. While the Commission assigned 11 specific eastern channels (at 119° W.L.) to EchoStar in 1992, it required EchoStar to submit additional information regarding its contract for western channels and the question remained outstanding for over a decade.¹

In May 2002, the Commission found that EchoStar had satisfied the first prong of due diligence for the 11 western channels, and gave EchoStar 10 days to specify its preferred channel assignments at one western orbit location.² On May 28, 2002, EchoStar submitted a letter notifying the Commission of its selection of the odd-numbered Channels 1-21 at the 157° W.L. orbit location as the channel assignment for its western DBS permit and providing the rationale for its selection.³ Notwithstanding this selection, the Commission directed EchoStar to

¹ See *EchoStar Satellite Corporation, Assignment of Direct Broadcast Satellite Orbital Positions and Channels*, 7 FCC Rcd. 1765, 1771 (1992) (stating that a western orbit position and channel assignment cannot be made to EchoStar at this time and affording EchoStar additional time to demonstrate due diligence with regard to its proposed western satellite).

² See *EchoStar Satellite Corporation for Assignment of Direct Broadcast Satellite Orbital Position and Channels*, Memorandum Opinion and Order, File No. DBS-88-01, DA 02-1163 (Sat. Div., Int’l Bur.) (rel. May 16, 2002); see *id.* at ¶¶ 7, 10.

³ See Letter from Pantelis Michalopoulos and Carlos M. Nalda, Counsel for EchoStar Satellite Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission (May 28, 2002). In June 1998, DIRECTV Enterprises, Inc. surrendered its 27 western channel assignments at the 157° W.L. orbital location. See Letter from Gary M. Epstein, Counsel for DIRECTV Enterprises, Inc. to Regina Keeney, Chief, International Bureau, Federal Communications Commission (May 22, 1998).

select one of its original orbital locations, either 148° W.L. or 175° W.L.⁴ In response, EchoStar requested the use of eight remaining channels at 148° W.L., which it had previously been using pursuant STA.⁵ EchoStar subsequently requested authority to operate its three remaining western channels at the 157° W.L. orbital location using the EchoStar IV satellite, which is not operating at full capacity because of several transponder anomalies.⁶

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⁸ See *id.*, ¶ 12.

Since EchoStar IV's relocation to 157° W.L., it has become apparent that the satellite cannot operate simultaneously on all three of the channels that were assigned to EchoStar at that location. Based on a detailed analysis of remaining operational amplifiers and switching constraints, it is clear that the transponders associated with the assigned frequencies are not sustainable. For example, with respect to channel 5, all three available redundant TWT paths have failed and there is insufficient input/output switching available to use other TWTs for that channel. However, because other transponders on the satellite remain functional, EchoStar IV is capable of providing DBS service on other channels. Specifically, there are only three logical combinations of channels that will allow EchoStar to use a total of three channels at that slot with at least one of which being an assigned channel: (a) 1, 7, and 11; (b) 1, 15 and 19; or (c) 3, 7, and 11. Thus, EchoStar seeks an STA to operate over two channels other than those initially assigned to EchoStar at the 157° W.L. orbital location.

II. GRANT OF ECHOSTAR'S REQUEST FOR SPECIAL TEMPORARY AUTHORITY WILL NOT CAUSE ANY HARMFUL INTERFERENCE AND WILL SERVE THE PUBLIC INTEREST

The Commission has a long-standing policy of granting Special Temporary Authority where such authorization will not cause harmful interference and will serve the public interest, convenience and necessity. *See, e.g., In the Matter of American Telephone & Telegraph Company*, 8 FCC Rcd. 8742, 8742 (1993) ("Granting the AT&T request will serve the public interest, convenience and necessity . . . [It] will allow AT&T to continue to provide service to its TELSTAR 301 customers while ensuring that TELSTAR 301 is fully operational before it is placed into service."); *see also In the Matter of Hughes Communications Galaxy, Inc.*, 10 FCC Rcd. 11024, 11024 (1995) ("Grant of this modification will provide an opportunity for the public to continue receiving services from Galaxy III . . . grant of Hughes's application will serve the

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EchoStar is the only entity authorized to conduct DBS operations from the 157° W.L. orbit location. Thus, the requested STA will not cause any harmful interference to any authorized user of the spectrum.

Permitting EchoStar IV to use alternative channels at 157° W.L. pursuant to STA also will allow EchoStar to use the total number of licensed channels at that location, to the benefit of U.S. consumers. Conversely, without the authority requested here, EchoStar would have to operate over fewer channels than the number licensed. Thus, the requested STA will enable EchoStar to provide more services to its customers (up to the number of licensed channels) than would otherwise be the case, including pay-per-view, international, business television and other specialized services. Rather than limiting EchoStar to its original channel assignment and effectively precluding the use of two-thirds of EchoStar’s assigned spectrum at 157° W.L., the public would be best served by allowing the EchoStar IV satellite to operate on a temporary basis over alternative channels that it can actually utilize. At the same time, because the total number of channels to be temporarily used at that location remains the same (and, indeed, EchoStar is requesting the substitution of odd-numbered channels for other odd-

numbered channels), this request creates no prejudice whatsoever for other companies interested in operating at the 157° W.L. orbital location in the future.

For all of these reasons, grant of the instant STA request would strongly serve the public interest.

III. SECTION 304 WAIVER

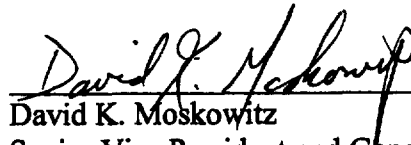
In accordance with Section 304 of the Communications Act of 1934, 47 U.S.C. § 304, EchoStar hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum because of the previous use of the same, whether by license or otherwise.

IV. CONCLUSION

For the foregoing reasons, EchoStar hereby respectfully requests Special Temporary Authority to operate the EchoStar IV satellite using channels 7 and 11, or alternatively channels 15 and 19, instead of two of the channels licensed to EchoStar at the 157° W.L. orbit location.

Respectfully submitted,

EchoStar Satellite Corporation

A handwritten signature in black ink, appearing to read "David K. Moskowitz", is written over a horizontal line.

David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Satellite Corporation
5701 South Santa Fe
Littleton, CO 80120
(303) 723-1000

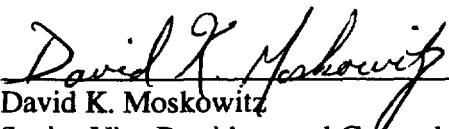
Dated: September 3, 2003

ANTI-DRUG ABUSE ACT CERTIFICATION

Pursuant to Section 1.2002 of the Commission's Rules, 47 C.F.R. Section 1.2002 (1997), Applicant certifies that neither Applicant nor any of its shareholders, nor any of its officers or directors, nor any party to this Application, are subject to a denial of Federal benefits pursuant to authority granted in Section 5301 of the Anti-Drug Abuse Act of 1988.

Respectfully submitted,

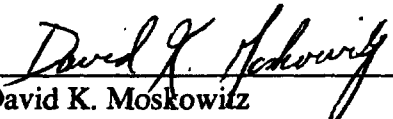
EchoStar Satellite Corporation

By: 
David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Satellite Corporation
5701 South Santa Fe
Littleton, CO 80120
(303) 723-1000

Dated: September 3, 2003

DECLARATION

I, David K. Moskowitz, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



David K. Moskowitz
Senior Vice President and General Counsel
EchoStar Satellite Corporation
5701 South Santa Fe
Littleton, CO 80120
(303) 723-1000

Dated: September 3, 2003