

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

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JUN 21 2005

Federal Communications Commission
Office of Secretary

Application of)

ECHOSTAR SATELLITE L.L.C.)

For Special Temporary Authority to Operate the)
EchoStar 9 Satellite in the Lower 500 MHz Portion)
of the Ka-band Frequencies at the 121° W.L.)
Orbital Location.)

) Call Sign S2179
) File No. SAT-STA-20050608-00116

Received

JUN 22 2005

Policy Branch
International Bureau

REPLY

EchoStar Satellite L.L.C. ("EchoStar") hereby responds to the Opposition of contactMEO Communications, LLC ("@contact") filed in the above-referenced proceeding on June 17, 2005 ("Opposition").¹ For the reasons discussed below, @contact's objections to the requested Special Temporary Authority ("STA") are without merit and the Bureau should proceed to grant EchoStar's application expeditiously.

@contact Lacks Standing. EchoStar questions @contact's standing to oppose the instant STA request and for this reason alone the International Bureau should reject its Opposition. @contact's pending application to operate a satellite at the 121° W.L. orbital location for authority to use, among other things, the primary NGSO portion of the Ka-band relates to completely different spectrum than the primary GSO Ka-band frequencies requested by EchoStar in the above-captioned application.² Thus, EchoStar's STA request has absolutely no

¹ See Opposition to Application for Special Temporary Authority, filed in SAT-STA-20050608-00116 (filed Jun. 17, 2005).

² Compare contactMEO Communications, LLC, Amendment at 3, SAT-AMD-20040322-00057 (filed Mar. 22, 2004) (requesting, among other things, authority to operate a

frequency overlap with @contact's pending Ka-band application and @contact has not provided any other basis for establishing its standing in this proceeding.

Grant of the Requested STA Would Serve the Public Interest and Is Consistent With Prior Precedent. In any event, contrary to @contact's assertions, EchoStar has amply demonstrated the public interest benefits of granting the requested STA -- EchoStar will be able to make almost immediate use of spectrum that would otherwise lie fallow. In prior cases, the Bureau has granted STAs to permit satellite operators with existing capacity in orbit to temporarily operate in unused spectrum not assigned to anyone or assigned to another operator pending the launch of a satellite by the licensee.³ In those cases, the Bureau found that the grant of an STA served the public interest in favor of increased competition⁴ and efficient spectrum utilization.⁵ Indeed, in one of those cases, the Bureau rejected objections almost identical to the

geosynchronous satellite at the 121° W.L. orbital location in the 18.9-19.3 GHz and 28.6-29.1 GHz frequency bands) with EchoStar Satellite L.L.C., Application for Special Temporary Authority at 1, SAT-STA-20050608-00116 (filed Jun. 8, 2005) ("STA Application") (requesting temporary authority to operate EchoStar 9 in the 18.3-18.8 GHz, 28.35-28.6 GHz and 29.25-29.5 GHz bands).

³ See STA Application at 2 n.3, citing *EchoStar Satellite Corp.*, Order, 11 FCC Rcd 5351 (1996) (granting special temporary authority for applicant to operate on DBS frequencies assigned to another operator, pending launch of the other operator's satellite) ("EchoStar DBS Order"); *Direct Broadcasting Satellite Corp.*, Memorandum, Opinion and Order, 13 FCC Rcd 6392 (1998) ("DBSC Order") (same).

⁴ See EchoStar DBS Order at ¶ 5 ("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."); DBSC Order at ¶ 7 ("[Authorizing temporary] [u]se of these channels will also foster competition in the multichannel video program distribution market")

⁵ See DBSC Order at ¶ 7 ("We find that grant of DBSC's request for special temporary authority will enable it to provide DBS service on currently unused channels, thus furthering the Commission's objective to make efficient use of available spectrum.").

ones raised by @contact in this proceeding.⁶ @contact does not mention, let alone address, any of these cases in its Opposition.

In the present circumstances, the case for the grant of an STA to EchoStar is even stronger. Unlike in the prior Bureau decisions, there is no current licensee for the requested frequencies. Celsat has recently surrendered its Ka-band authorization.⁷ Nor would the grant of an STA affect any prospective applicant for permanent authority. Contrary to @contact's assertion, the grant of this STA would not confer a "preemptive right"⁸ on EchoStar over use of the requested Ka-band frequencies. When Celsat's surrender of its license was placed on public notice on June 17, 2005,⁹ all interested parties enjoyed an equal opportunity to apply for the vacant Ka-band spectrum.¹⁰ The presence of the instant STA request prejudiced no would-be applicant for use of these frequencies. As it turned out, EchoStar was the first and only applicant to apply for the Ka-band spectrum that became available for re-assignment at 121° W.L. But

⁶ See EchoStar DBS Order at ¶ 3 ("In its opposition, DIRECTV argues that EchoStar offers no adequate public interest basis for its request. EchoStar has not, DIRECTV contends, demonstrated that its use of Tempo's channels will enable the public to receive services that are not otherwise available, or that any other unique circumstances justify this deviation from normal spectrum allocation processes. DIRECTV asserts that grant of EchoStar's request could amount to the effective re-assignment of Tempo's spectrum to EchoStar."); *id* at ¶ 7 ("[W]e find that grant of EchoStar's request will serve the public interest, convenience and necessity.").

⁷ See Public Notice, Report No. SAT-00300, DA 05-1687 (rel. Jun. 17, 2005) ("*Celsat Public Notice*").

⁸ Opposition at 2.

⁹ See *Celsat Public Notice*.

¹⁰ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, FCC 03-102, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54., 18 FCC Rcd 10760, at ¶ 113 ("[W]e will consider an orbit location to become 'available' . . . upon release of a public notice announcing that a licensee has surrendered its license Thus, all parties potentially interested in providing satellite service from the orbit location at issue have an equal opportunity to apply for the license when the orbit location becomes available.").

even if another applicant were to have been first-in-line for the surrendered Ka-band spectrum, the grant of the requested STA would still have no impact on the prospective licensee because, consistent with the Bureau's prior precedent, temporary operations would have to cease upon the licensee's deployment of a satellite to its assigned orbital location.¹¹

EchoStar Would Not Enjoy Unfair Access to Spectrum From a Grant of the Requested STA. Contrary to @contact's suggestion,¹² EchoStar would not receive any unfair access to spectrum over other applicants as a result of the requested STA for at least two reasons: (1) EchoStar is uniquely suited to operate an in-orbit Ka-band satellite at 121° W.L. and no one else currently has the capability to make use of the lower Ka-band spectrum; and (2) the grant of the instant STA would not prejudice any other applicant's ability to obtain authority to operate on the lower Ka-band frequencies.

In sum, the public interest will be served by permitting the immediate, temporary use of spectrum and orbital resources by an operator with existing satellite capacity already in place. Accordingly, for the reasons stated above and in EchoStar's Application, the Bureau should grant the requested STA.

¹¹ See EchoStar DBS Order at ¶ 5; DBSC Order at ¶ 12. There would also be no prejudice to EchoStar customers upon cessation of temporary operations, given (1) the short duration of the requested STA, (2) the commercial services proposed by EchoStar, and (3) the fact that EchoStar is the first-in-line applicant for authority to operate on the lower Ka-band frequencies at 121° W.L. As a result, in this case there is no need to condition the STA on EchoStar giving notice to its customers that service in the lower Ka-band is temporary and may be terminated without prior notice. See EchoStar DBS Order at ¶ 6 (dispensing with such a condition when not necessary in the circumstances to protect consumers).

¹² Opposition at 3 ("By granting EchoStar an STA to use this spectrum commercially now, the Commission would instantly award EchoStar a unique operational benefit allowing it to secure a critical market advantage over everyone else -- hardly an even playing field in access to valuable spectrum.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of June 2005, a copy of the foregoing was served upon the following by hand (as indicated by *) or by first-class mail:

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