

Approved by OMB
3060-0678

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File Number: SAT-STA-20051018-00202
Callsign: S2621

FEDERAL COMMUNICATIONS COMMISSION
APPLICATION FOR SPACE STATION SPECIAL TEMPORARY AUTHORITY
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APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:

Application to Extend Authority Granted in SAT-STA-20050826-00167 (S2621) for an Additional 30 Days

1. Applicant

Name:	EchoStar Satellite Operating Corporation	Phone Number:	303-723-1000
DBA Name:		Fax Number:	303-723-1699
Street:	9601 South Meridian Boulevard	E-Mail:	
City:	Englewood	State:	CO
Country:	USA	Zipcode:	80112 -
Attention:	David K Moskowitz		



File # SAT-STA-20051018-00202

Call Sign S2621 Grant Date 10/27/05
(or other identifier)

From 30 days Term Dates 11/3/05

Approved: [Signature]

Policy Branch Chief

w/conditions.

ATTACHMENT
Conditions of Authorization: SAT-STA-20051018-00202
Call Sign: S2621
Grant Date: October 27, 2005

EchoStar Satellite, LLC's request, File No. SAT-STA-20051018-00202, IS GRANTED for a period of 30 days and EchoStar Satellite LLC ("EchoStar") IS AUTHORIZED to continue to conduct Tracking, Telemetry, and Command (TT&C) necessary to maintain the EchoStar 4 satellite at the 77° W.L. orbital location.¹ EchoStar IS ALSO AUTHORIZED to continue to operate at the 77° W.L. orbital location. This authorization is subject to the following conditions:

1. At the 77° W.L. orbital location, Echostar shall operate so as not to exceed, under any conditions, and taking into account all variations in satellite attitude, the parameters specified in Attachment A of the Letter, dated May 10, 2005, from Pantelis Michalopoulos to the Secretary, FCC.

2. All operations at the 77° W.L. orbital location shall be on a non-harmful interference basis, *i.e.*, EchoStar Satellite LLC shall not cause harmful interference to, and shall not claim protection from interference caused to it by, any other lawfully operating satellites or radio communication service.

3. In the event of any harmful interference as a result of EchoStar's operations at the 77° W.L. orbital location, EchoStar shall cease operations immediately upon notification of such interference and shall inform the FCC, in writing, immediately of such an event.

4. EchoStar shall inform its customers that operations at the 77° W.L. orbital location are on a non-harmful interference basis and that EchoStar must cease operations upon notification of such interference.

5. EchoStar shall maintain full operational control of the EchoStar 4 satellite at all times.

6. This authorization is issued on the express understanding that, to the extent EchoStar, pursuant to its agreement with SES Latin America, a private company, and its affiliated companies, will conform its operations to any parameters agreed to in coordination agreements between the Administration of Mexico and other Administrations, responsibility for both compliance with and enforcing compliance with those agreements is a matter which would arise under private law.

7. This authorization is issued with the understanding that this grant is not an approval of any specific agreement entered into by EchoStar, its subsidiaries, and affiliates, nor of any specific provision of any such agreement, concerning operation of the EchoStar 4 satellite, nor is it an approval of an agreement concerning any related matter, nor of any specific provision of any such agreement concerning any related matter.

8. In connection with the provision of service in any particular country, EchoStar is

¹ On July 6, 2005, the Satellite Division granted IBFS File No. SAT-STA-20050701-00142. See *Public Notice*, Report No. SAT-00306 (rel. July 8, 2005). The Satellite Division granted a renewal request for this STA on August 5, 2005, IBFS File No. SAT-STA-20050803-00157, *Public Notice*, Report No. SAT-00313 (rel. August 12, 2005); and on September 10, 2005, IBFS File No. SAT-STA-20050826-00167.

obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.

9. This authorization is issued with the understanding that the United States remains the licensing administration of the EchoStar 4 satellite for purposes of ITU Radio Regulation 18.1 unless and until the FCC expressly approves a transfer of responsibility to another licensing administration, and that operations of the EchoStar 4 satellite while the FCC remains the licensing administration are pursuant to ITU Radio Regulation 4.4.

10. This authorization is issued with the understanding that with respect to its filings with the ITU for the 77° W.L. orbital location, the Administration of Mexico is not acting pursuant to Article 9 of the Radio Regulations on behalf of the United States Administration.

11. This authorization is issued with the understanding that this grant does not in any way express a view concerning, or agreement as to, the validity or lack of validity of any ITU filing at or within the vicinity of the 77° W.L. orbital location.

12. Grant of this authorization does not convey to EchoStar any authority to operate a replacement satellite at the 77° W.L. orbital location or any priority in the United States satellite licensing process relative to applications for authority to operate a regularly authorized satellite at this orbital position.

13. Grant of this authority is without prejudice to action on EchoStar's STA request, File No. SAT-SAT-20050321-00068 (Call Sign S2621), or EchoStar's application for Modification of an Earth Station authorization, SES-MFS-20050527-00662 (Call Sign E020306).



File # SAT-STA-20051018-00202

Call Sign S2621 Grant Date 10/27/05
(or other identifier)

Term Dates
From + 30 days To 11/3/05

Approved: [Signature]
w/cand & rev's.

Policy Branch Chief

2. Contact

Name:	Pantelis Michalopoulos	Phone Number:	202-429-6494
Company:	Steptoe & Johnson LLP	Fax Number:	202-429-3902
Street:	1330 Connecticut Ave., NW	E-Mail:	pmichalo@steptoe.com
City:	Washington	State:	DC
Country:	USA	Zipcode:	20036 -1795
Attention:		Relationship:	Legal Counsel

(If your application is related to an application filed with the Commission, enter either the file number or the IB Submission ID of the related application. Please enter only one.)

3. Reference File Number SATSTA2005082600167 or Submission ID

4a. Is a fee submitted with this application?

If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).

Governmental Entity Noncommercial educational licensee

Other (please explain):

4b. Fee Classification CRY - Space Station (Geostationary)

5. Type Request

Change Station Location

Extend Expiration Date

Other

6. Temporary Orbit Location
77 W.L.

7. Requested Extended Expiration Date
2005-11-03 00:00:00.0

8. Description (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

See attached narrative.

9. By checking Yes, the undersigned certifies that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes. Yes No

10. Name of Person Signing
David K. Moskowitz

11. Title of Person Signing
Executive Vice President and General Counsel

12. Please supply any need attachments.

Attachment 1: Narrative

Attachment 2:

Attachment 3:

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT
(U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION
(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

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THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104-13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

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

In the Matter of)
)
)

**ECHOSTAR SATELLITE OPERATING
CORPORATION**)
)
)

Application for Extension of Special)
Temporary Authority to Operate the EchoStar 4)
Satellite at the 77° W.L. Orbital Location)
Pursuant to U.S. Authority.)
_____)

File No. SAT-STA-20050701-00142

File No. SAT-STA-20050803-00157

File No. SAT-STA-20050826-00167

File No. SAT-STA-2005-1018-00202

Call Sign: S2621

**APPLICATION FOR NUNC PRO TUNC EXTENSION OF SPECIAL TEMPORARY
AUTHORITY**

Pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309, and Part 25 of the Commission's Rules, 47 C.F.R. Part 25, EchoStar Satellite Operating Corporation ("EchoStar") hereby requests an extension of the term of the above-captioned Special Temporary Authorization ("STA"), as extended, through November 3, 2005. Further, EchoStar respectfully requests that the Commission grant this authority nunc pro tunc,¹ dating from October 5, 2005, when the most recent STA expired by its terms.² In support of this Application, EchoStar submits the following:

¹ The Commission will grant applications nunc pro tunc if such grant is in the public interest. *See, e.g.*, SES-MOD-20050603-00688 (granting authority nunc pro tunc to extend the construction date through September 21, 2001); *In the Matter of Application of Shekinah Network; For Extension of Construction Permit For Instructional Television Fixed Service Station WNC533, Carlsbad, New Mexico*, Memorandum Opinion and Order, 19 FCC Rcd 4761 (2004).

² To the extent required, EchoStar also requests a waiver of Section 25.120(a) of the Rules which requires the filing of an STA extension request at least three days prior to its expiration.

I. GRANTING THE REQUESTED EXTENSION IS IN THE PUBLIC INTEREST

On July 6, 2005, the International Bureau ("Bureau") granted EchoStar an STA to move the EchoStar 4 satellite to the 77° W.L. orbital location and to operate at that location, subject to a number of conditions, for a thirty day period.³ On August 5, 2005 and September 10, 2005, the Bureau granted extensions of this STA for additional thirty day periods.⁴ EchoStar belatedly requests an extension of the most recent STA for another 30 days up to and including November 3, 2005, pending the Bureau's consideration of EchoStar's recently reinstated request to transfer licensing responsibility for the EchoStar 4 satellite at 77° W.L. from the United States to Mexico.⁵ The Bureau has already found that it would serve the public interest to authorize EchoStar to move the EchoStar 4 satellite to the 77° W.L. orbital location and to operate temporarily from that location at its own risk, pending action on EchoStar's reinstatement request. An extension of this STA for another 30 days will allow the Bureau to complete its

³ See Stamp Grant, SAT-STA-20050701-00142 (granted July 6, 2005). The EchoStar 4 satellite reached the 77° W.L. orbital location and has commenced operations. See Letter from Pantelis Michalopoulos, Counsel for EchoStar to Marlene H. Dortch, Secretary, FCC (July 11, 2005).

⁴ See Stamp Grant, SAT-STA-20050803-00157 (granted August 5, 2005) and Stamp Grant, SAT-STA-20050826-00167 (granted September 10, 2005).

⁵ See *In the Matter of EchoStar Satellite L.L.C., Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations during the Relocation of EchoStar 4 to the 77° W.L. Orbital Location; Application for Modification of Direct Broadcast Satellite Authorization to Permit Long-Term Cessation of Operations on Three DBS Channels at the 157° W.L. Orbital Location; Application for Modification of Earth Station Authorization to add the EchoStar 4 Satellite at 77° W.L. as a Point of Communication*, DA 05-1581 (rel. Jun. 3, 2005) ("June 3 Order"), *pet. for recon. granted in part*, DA 05-2067 (rel. Jul. 25, 2005) (reinstating the applications denied and dismissed under the *June 3 Order*). See also Public Notice, Report No. SAT-00311 (rel. Jul. 27, 2005) (placing reinstated satellite applications on public notice); Public Notice, Report No. SES-00734 (rel. Jul. 27, 2005) (placing reinstated earth station application on public notice).

review and analysis of EchoStar's reinstated application and would similarly serve the public interest.

II. GRANTING THE REQUESTED EXTENSION NUNC PRO TUNC WOULD SERVE THE PUBLIC INTEREST

Due to an administrative oversight by EchoStar's outside counsel, EchoStar failed to file this extension request in a timely manner; *i.e.*, prior to October 4, 2005, when its latest STA extension expired. EchoStar continued to file, however, its STA extension request for the associated earth station used to support the operations of EchoStar 4 at the 77° W.L. orbital location.⁶ Counsel for EchoStar has now put procedures in place to ensure that such an oversight does not happen again, including the automatic inclusion of the 30 day deadlines for any future STA extension requests in its automated docket control system.

It would serve to the public interest to waive the Commission's Rules insofar as necessary to permit the late filing and retroactive application of this extension request. Such a retroactive grant would serve to maintain the status quo while the Commission completes its review and analysis of EchoStar's reinstated request to transfer licensing responsibility for the EchoStar 4 satellite at 77° W.L. from the United States to Mexico. If EchoStar were to lose its temporary authority to operate EchoStar 4 at 77° W.L. pursuant to U.S. authority, it would have to discontinue its existing operations at that location pending a Commission determination on its request for authority to operate the satellite pursuant to Mexican authority.⁷ Further, retroactive

⁶ The latest earth station extension STA covers the period from October 11, 2005 to November 11, 2005. *See* SES-STA-20051005-01370.

⁷ The Administrative Procedures Act provides that "[w]hen a licensee has made a timely and sufficient application for renewal or a new license in accordance with agency rules, a license with reference to an activity of continuing nature does not expire until the application has been finally determined by an agency." *See* 47 U.S.C. § 558(c). In *Pan-Atlantic Steamship Corp. v. Atlantic Coast Line Railroad Co. et. al.*, 353 U.S. 436, 438-439 (1957), the Supreme
(Continued ...)

grant of this extension request would not prejudice any interested parties. No party objected to the last STA extension request.

III. WAIVER PURSUANT TO SECTION 304 OF THE ACT

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

IV. CONCLUSION

For the foregoing reasons, EchoStar respectfully requests the expeditious grant of the requested extension of the above-captioned STA to operate EchoStar 4 at 77° W.L. pursuant to U.S. authority through November 3, 2005.

Court held that a temporary authorization to operate for 180 days was a license under the terms of the APA. In *Petrocom License Corporation v. FCC*, 2001 U.S. Dist. LEXIS 600 (E.D. La. 2001), the court enjoined the Commission from terminating the licensee's developmental authority to operate wireless local loops serving oil platforms. The court found that Petrocom had met the requirements of 558(c) by (1) having an application outstanding at the time of the application for a renewal - the developmental license, (2) the license permitted activities of a continuing nature (*i.e.*, providing wireless services to customers paying a fee), (3) timely seeking FCC approval to continue those wireless services, and (4) the matter had not been finally determined by the FCC because there had only been a Bureau level decision ordering Petrocom to shut down its operations. While the factual situations are not exactly the same, in the present case, EchoStar arguably meets the requirements of Section 558(c) since it is also awaiting action on a pending application to operate EchoStar 4 at 77° W.L. pursuant to Mexican, its STA to stop and operate EchoStar 4 at 77° W.L. pursuant to U.S. authority was outstanding at the time its application pursuant to Mexican authority was reinstated, the STA permits activities of a continuing nature, and the request to operate EchoStar 4 at 77° W.L. served as a timely application to continue those services.

Respectfully submitted,

Pantelis Michalopoulos
Philip L. Malet
Brendan Kasper
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

Counsel for EchoStar Satellite Operating Corporation

October 18, 2005

/s/

David K. Moskowitz
Executive Vice President & General Counsel
EchoStar Satellite Operating Corporation
9601 South Meridian Boulevard
Englewood, CO 80112
(303) 723-1000

ATTACHMENT

Conditions of Authorization: SAT-STA-20051018-00202

Call Sign: S2621

Grant Date: October 19, 2005

EchoStar Satellite, LLC's request, File No. SAT-STA-20051018-00202, IS GRANTED and EchoStar Satellite LLC ("EchoStar") IS AUTHORIZED to continue to conduct Tracking, Telemetry, and Command (TT&C) necessary to maintain the EchoStar 4 satellite at the 77° W.L. orbital location.¹ EchoStar IS ALSO AUTHORIZED to continue to operate at the 77° W.L. orbital location.² This authorization is subject to the following conditions:

1. At the 77° W.L. orbital location, Echostar shall operate so as not to exceed, under any conditions, and taking into account all variations in satellite attitude, the parameters specified in Attachment A of the Letter, dated May 10, 2005, from Pantelis Michalopoulos to the Secretary, FCC.

2. All operations at the 77° W.L. orbital location shall be on a non-harmful interference basis, *i.e.*, EchoStar Satellite LLC shall not cause harmful interference to, and shall not claim protection from interference caused to it by, any other lawfully operating satellites or radio communication service.

3. In the event of any harmful interference as a result of EchoStar's operations at the 77° W.L. orbital location, EchoStar shall cease operations immediately upon notification of such interference and shall inform the FCC, in writing, immediately of such an event.

4. EchoStar shall inform its customers that operations at the 77° W.L. orbital location are on a non-harmful interference basis and that EchoStar must cease operations upon notification of such interference.

5. EchoStar shall maintain full operational control of the EchoStar 4 satellite at all times.

6. This authorization is issued on the express understanding that, to the extent EchoStar, pursuant to its agreement with SES Latin America, a private company, and its affiliated companies, will conform its operations to any parameters agreed to in coordination agreements between the Administration of Mexico and other Administrations, responsibility for both compliance with and enforcing compliance with those agreements is a matter which would arise under private law.

7. This authorization is issued with the understanding that this grant is not an approval of any specific agreement entered into by EchoStar, its subsidiaries, and affiliates, nor of any specific provision of any such agreement, concerning operation of the EchoStar 4 satellite, nor is it an approval of an agreement concerning any related matter, nor of any specific provision of

¹ On July 6, 2005, the Satellite Division granted SAT-STA-20050701-00142. See Public Notice, Report No. SAT-00306 (rel. July 8, 2005).

² *Id.*

any such agreement concerning any related matter.

8. In connection with the provision of service in any particular country, EchoStar is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.

9. This authorization is issued with the understanding that the United States remains the licensing administration of the EchoStar 4 satellite for purposes of ITU Radio Regulation 18.1 unless and until the FCC expressly approves a transfer of responsibility to another licensing administration, and that operations of the EchoStar 4 satellite while the FCC remains the licensing administration are pursuant to ITU Radio Regulation 4.4.

10. This authorization is issued with the understanding that with respect to its filings with the ITU for the 77° W.L. orbital location, the Administration of Mexico is not acting pursuant to Article 9 of the Radio Regulations on behalf of the United States Administration.

11. This authorization is issued with the understanding that this grant does not in any way express a view concerning, or agreement as to, the validity or lack of validity of any ITU filing at or within the vicinity of the 77° W.L. orbital location.

12. Grant of this authorization does not convey to EchoStar any authority to operate a replacement satellite at the 77° W.L. orbital location or any priority in the United States satellite licensing process relative to applications for authority to operate a regularly authorized satellite at this orbital position.

13. Grant of this authority is without prejudice to action on EchoStar's STA request, File No. SAT-SAT-20050321-00068 (Call Sign S2621), or EchoStar's application for Modification of an Earth Station authorization, SES-MFS-20050527-00662 (Call Sign E020306).