

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
EchoStar Satellite Operating Corporation)
)
Application for Extension and Modification of) IBFS File No. SAT-STA-20060324-00029
Special Temporary Authority to Operate) IBFS File No. SAT-STA-20070105-00008
Direct Broadcast Satellite Service over)
Channels 23 and 24 at the 61.5° W.L. Orbital)
Location)

ORDER AND AUTHORIZATION

Adopted: February 1, 2007

Released: February 2, 2007

By the Chief, International Bureau:

I. INTRODUCTION

1. With this Order, we grant EchoStar Satellite Operating Corporation (EchoStar) special temporary authority (STA) to continue to operate its EchoStar 12 satellite on two unassigned channels -- channels 23 and 24 -- at the 61.5° W.L. orbital location for a period of 60 days. We also suspend the customer notification and programming content conditions contained in the previous STA during the term of the new STA. These actions will give EchoStar the flexibility to meet its customers' programming needs in light of transponder failures on the EchoStar 3 satellite, which is co-located at the 61.5° W.L. orbital location.

II. BACKGROUND

2. There are 32 DBS service channels at the 61.5° W.L. orbital location. EchoStar is authorized to operate on 22 channels (1-22). Dominion Video Satellite, Inc. (Dominion) is authorized to operate on eight channels (25-32). EchoStar is leasing several of these channels from Dominion. The two remaining channels -- channels 23 and 24 -- are unassigned. EchoStar, however, is currently operating on these two channels pursuant to an STA.¹

3. EchoStar's STA to operate on the two channels includes several conditions. One of these conditions requires EchoStar to notify its customers that EchoStar is providing service pursuant to special temporary authority and is required to terminate operations when the satellite regularly assigned to those channels is launched.² The STA also limits the programming EchoStar can provide to "free-standing

1 Rainbow DBS Company LLC, Assignor, and EchoStar Satellite L.L.C., Assignee, Consolidated Application for Consent to Assignment of Space Station and Earth Station Licenses, and related Special Temporary Authorization, Memorandum Opinion and Order, 20 FCC Rcd 16868, 16881 ¶ 33 (2005) (Assignment Order); see also IBFS File No. SAT-STA-20050926-00183.

2 Direct Broadcasting Satellite Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 1-21 (odd) and 23-32 (even) at 61.5° W.L., Memorandum Opinion and Order, 13 FCC Rcd 6392, 6395 ¶ 9 (Int'l Bur. 1998) (1998 EchoStar STA Order); EchoStar Satellite Corporation, Application (continued....)

separate programming packages that are not required as a condition of purchasing any other programming packages and that are readily capable of being withdrawn on short notice."³ This condition prohibits EchoStar from providing any programming that customers may expect to be provided on a continuing basis. It allows EchoStar, however, to provide stand-alone, single broadcasts, such as pay-per-view.

4. In March 2006, EchoStar requested a 180-day extension of the STA, and sought to eliminate the customer notification requirement.⁴ The Commission placed the application on public notice for comment.⁵ No comments were filed. On January 5, 2007, EchoStar filed a request for expedited action on the pending STA application. In that request, it sought to temporarily waive the programming restrictions.⁶ EchoStar bases its January 2007 STA request on the deteriorating condition of the EchoStar 3 satellite, which is co-located at the 61.5° W.L. orbital location. EchoStar contends that transponder failures on EchoStar 3 require it to make other arrangements to continue to serve its customers from that location. We placed the January 2007 STA request on Public Notice on February 2, 2007.⁷

III. DISCUSSION

5. As described more fully below, we find that it is in the public interest to allow EchoStar to continue to operate under STA on channels 23 and 24 at the 61.5° W.L. orbital location. We also find it in the public interest to temporarily suspend the customer notification and programming conditions of the STA.

6. In its request for expedited action, EchoStar states that an increasing number of transponders are failing on its co-located EchoStar 3 satellite.⁸ As a result, EchoStar asserts it cannot use certain licensed or leased channels that it has previously used to provide regular programming from this orbital location. EchoStar states that the transponder failure has required it to remove some regular programming from its service offerings, and that it expects the continuing degradation of EchoStar 3's transponders to lead to more service problems. EchoStar states that it plans to launch a replacement satellite later this year that will be capable of operating on all of EchoStar's assigned and leased channels at the 61.5° W.L. orbital location. Until it launches the replacement satellite, however, EchoStar asserts that its only means to make up for the shortage of transponder capacity at this location is to provide service from EchoStar 12 on channels 23 and 24 without programming restrictions.⁹ Suspending these restrictions will enable EchoStar to avoid any further disruption of regular programming to its customers as a result of the

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for Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the 61.5° W.L. Orbital Location, and Rainbow DBS Company L.L.C., Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the 61.5° W.L. Orbital Location, *Order and Authorization*, 18 FCC Rcd 19825, 19828 ¶ 9 (Int'l Bur. 2003) (*Rainbow STA Order*); *Assignment Order*, 20 FCC Rcd at 16881 ¶ 33.

³ *Rainbow STA Order*, 18 FCC Rcd at 19828 ¶ 9.

⁴ EchoStar Satellite L.L.C. and EchoStar Satellite Operating Corporation Application for Extension and Modification of Special Temporary Authority, IBFS File No. SAT-STA-20060324-00029.

⁵ Policy Branch Information, Satellite Space Applications Accepted for Filing, Report No. SAT-00362 (released May 19, 2006).

⁶ EchoStar Satellite Operating Corporation Request for Expedited Action and Minor Amendment, IBFS File No. SAT-STA-20070105-00008 (January 2007 Application).

⁷ Policy Branch Information, Satellite Space Applications Accepted for Filing, Report No. SAT-00418 (released Feb. 2, 2007).

⁸ January 2007 Application at 5.

⁹ January 2007 Application at 6.

EchoStar 3 transponder failures. It will also avoid confusion to its customers regarding the continued availability of regular programming. EchoStar agrees to the reinstatement of the customer notification and programming conditions once its replacement satellite is capable of providing service.¹⁰

7. We find that the continuing degradation of transponders on the EchoStar 3 satellite justifies a temporary suspension of the customer notification and programming conditions of the STA. Temporary suspension will give EchoStar greater flexibility to meet its customers' needs until it is able to launch its planned replacement satellite into that location later this year.

8. We will suspend these conditions, however, only until EchoStar begins operations on the replacement satellite at 61.5° W.L. Accordingly, we require EchoStar to file a report on the status of its replacement satellite within 30 days of the release of this Order. Further, we require EchoStar to file a report on the status of EchoStar 3's operations on the same date.

9. Additionally, as in the previous STA, we will require EchoStar to terminate operations on channels 23 and 24 once a regularly-assigned licensee begins operations on these channels. We note that the Commission is currently conducting two proceedings in which it is considering DBS licensing, in general, and the eligibility to hold a DBS license on these two channels, in particular.¹¹ EchoStar's operations pursuant to this STA are therefore subject to the outcome of these proceedings. Given the restrictions on EchoStar's continued operations on these channels, we intend to re-impose the customer notification and programming conditions once the replacement satellite is launched. These re-imposed conditions will ensure that EchoStar's customers are made fully aware of the temporary nature of service on these two channels.

IV. ORDERING CLAUSES

10. For the foregoing reasons, we find that the public interest, convenience and necessity will be served by allowing EchoStar to operate its EchoStar 12 satellite on channels 23 and 24 at the 61.5° W.L. orbital location, subject to the conditions imposed herein.

11. Accordingly, IT IS ORDERED that EchoStar Satellite Operating Corporation's Applications for Extension and Modification of Special Temporary Authority to Operate Direct Broadcast Satellite Service over Channels 23 and 24 at the 61.5° W.L. Orbital Location, IBFS File Nos. SAT-STA-2007-0105-00008 and SAT-STA-20060324-00029 ARE GRANTED, IN PART, and EchoStar Satellite Operating Corporation may provide service pursuant to this Special Temporary Authorization until April 3, 2007.

12. IT IS FURTHER ORDERED that EchoStar Satellite Operating Corporation's use of channels 23 and 24 at the 61.5° W.L. orbital location shall cause no harmful interference to any other lawfully operating radio station and EchoStar Satellite Operating Corporation shall cease operation on those channels immediately upon notification of such interference.

13. IT IS FURTHER ORDERED that EchoStar Satellite Operating Corporation shall not claim protection from interference from any other lawfully operated radio station with respect to its operations

¹⁰ January 2007 Application at 7.

¹¹ Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States, *Notice of Proposed Rulemaking*, FCC 06-120, IB Docket 06-160 (2006) (*DBS NPRM*); Auction of Direct Broadcast Satellite Licenses, *Order*, 19 FCC Rcd 23849, 23856 ¶ 16 (2004) (*Eligibility Order*) (EchoStar has requested reconsideration of this decision; EchoStar Satellite LLC Petition for Reconsideration, filed in Auction AUC-03-52 (filed May 20, 2005)).

on channels 23 and 24 and that EchoStar Satellite Operating Corporation's operation on channels 23 and 24 is at its own risk.

14. IT IS FURTHER ORDERED that upon launch and operation of a replacement satellite for EchoStar 3 at the 61.5° W.L. orbital location, the following conditions will apply:

1) EchoStar Satellite Operating Corporation:

a) must inform its customers, in writing, that services using the two unassigned channels at the 61.5° W.L. orbit location will be discontinued upon the termination of EchoStar's temporary authority to operate on these channels;

b) must provide the following language to its customers in its monthly billing statements:

"The [name of module(s)] is only temporarily available. Dish Network will discontinue these services upon the termination of Dish Network's temporary authority to operate on these channels. Therefore, [name of module] will cease to be available to you upon the termination of Dish Network's temporary authority to operate on these channels without prior notice. If you have any questions, please call us toll-free at [insert telephone number]."

c) must include in all marketing notification that service is being provided on a temporary basis and may be diminished or discontinued at any time. Any failure to comply with customer notification procedures will be subject to enforcement action.

2) Use of channels 23 and 24 at the 61.5° W.L. orbit location is for free-standing separate programming packages that are not required as a condition of purchasing any other programming packages and that are readily capable of being withdrawn on short notice. Consumers should not have any expectation that the packages that they are purchasing include additional programming provided over channels 23 and 24. Any failure to comply with this programming requirement will be subject to enforcement action.

15. IT IS FURTHER ORDERED that EchoStar Satellite Operating Corporation must file a report on March 5, 2007 describing the status of the replacement satellite for the EchoStar 3 satellite and the operating status of the EchoStar 3 satellite.

16. IT IS FURTHER ORDERED that EchoStar Satellite Operating Corporation shall cease operations on channels 23 and 24 at the 61.5° W.L. orbital location upon the launch and operation of a satellite regularly licensed to operate on these channels at this location.

17. IT IS FURTHER ORDERED that this Special Temporary Authority is conditioned on the outcome of any rules adopted in the Notice of Proposed Rulemaking Proceeding in IB Docket 06-160 (DBS License Processing Procedures Rulemaking).

18. IT IS FURTHER ORDERED that this Special Temporary Authority is conditioned on the outcome of the Commission decision on the petition for reconsideration of eligibility restrictions for DBS Channels 23 and 24 at the 61.5° W.L. orbital location.

19. EchoStar Satellite Operating Corporation is afforded thirty days from the date of release of this Special Temporary Authority to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

20. This action is taken pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309, and Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



Helen Domenici
Chief
International Bureau