

S2653 SAT-STA-20070926-00133 IB2007002349
EchoStar Satellite Operating Corporation
EchoStar 3

Approved by OMB
3060-0678

Date & Time Filed: Sep 26 2007 2:19:02:623PM
File Number: SAT-STA-20070926-00133
Callsign:

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 for Renewal of STA to Operate on Channels 23 and 24 at 61.5W

I. 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:	linda.kinney@echostar.com
City:	Englewood	State:	CO
Country:	USA	Zipcode:	80112
Attention:	Linda Kinney - (202) 293-0981		

FILE # SAT-STA-20070926-00133
Call Sign: 10/2/07
Issue Date: 11/14/07
3/5/08

Policy Branch Chief

Attachment
File No. SAT-STA-20070926-00133

EchoStar Satellite Operating Corporation's request, File No. SAT-STA-20070926-00133, IS GRANTED, and EchoStar Satellite Operating Corporation (EchoStar) IS AUTHORIZED to operate Direct Broadcast Satellite service from its EchoStar 12 satellite over Channels 23 and 24 at the 61.5° W.L. orbital location for a period of 180 days, from October 2, 2007 to March 31, 2008, subject to the following conditions:

1. EchoStar'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 shall cease operation on those channels immediately upon notification of such interference.
2. EchoStar shall not claim protection from interference from any other lawfully operated radio station with respect to its operations on channels 23 and 24 and that EchoStar's operation on channels 23 and 24 is at its own risk.
3. Upon launch and operation of a replacement satellite for EchoStar 3 at the 61.5° W.L. orbital location, the following conditions will apply:

a) EchoStar:


i) 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;

ii) 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]."

iii) must include in all marketing notification that service is being provided on a temporary basis and may be diminished or

w/cond terms



File # SAT-STA-20070926-00133

Call Sign _____ Grant Date 11/14/07

(or other identifier)

From 10/2/07 Term Dates To: 3/31/08

Approver: *[Signature]*

Policy Branch Chief

discontinued at any time. Any failure to comply with customer notification procedures will be subject to enforcement action.

b) 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.

4. EchoStar must file a report on February 11, 2008 describing the status of the replacement satellite for the EchoStar 3 satellite, and the operating status of the EchoStar 3 satellite. In its report, EchoStar should indicate the status of the construction of the replacement satellite, as well as the status of the associated launch vehicle.
5. EchoStar must file a report on February 11, 2008 describing any change to the operating status of the satellite since EchoStar filed its Spacecraft Health Report for the EchoStar 3 satellite on July 3, 2007.
6. EchoStar shall cease operations on channels 23 and 24 at the 61.5° W.L. orbit location upon the launch and operation of a satellite regularly licensed to operate on these channels at this location.
7. 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).
8. 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.
9. This Action is taken pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective immediately. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of the public notice indicating that this action was taken.

2. Contact

Name:	Pantelis Michalopoulos	Phone Number:	202-429-6494
Company:	Step toe & Johnson LLP	Fax Number:	202-429-3902
Street:	1330 Connecticut Ave., NW	E-Mail:	pmichalo@step toe.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 SATSTA2007032900058 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

7. Requested Extended Expiration Date

2008-03-29 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.)

This application requests renewal of EchoStar Satellite Operating Corporation's special temporary authority to operate a DBS satellite using channels 23 and 24 at the 61.5W orbital location for an additional 180 days. Please see the attached narrative for additional detail.

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
Linda Kinney

11. Title of Person Signing
Vice President, Law and Regulation

12. Please supply any need attachments.

Attachment 1: Narrative App.

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)) Request 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))))) File No. SAT-STA-20060324-00029) File No. SAT-STA-20070105-00008) File No. SAT-STA-20070329-00058) File No. SAT-STA-20070926-_____)
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REQUEST FOR RENEWAL OF SPECIAL TEMPORARY AUTHORITY

EchoStar Satellite Operating Corporation (“EchoStar”) requests renewal of its special temporary authority (“STA”) to operate on channels 23 and 24 at the 61.5° W.L. orbital location for an additional one hundred and eighty days. EchoStar also requests that the Commission grant the requested renewal subject to the same temporary suspension of the customer notification and programming conditions that the International Bureau approved for the 61.5° W.L. STA.¹ Consistent with that Bureau decision, grant of this renewal request would continue to serve the public interest.

I. BACKGROUND AND PROCEDURAL HISTORY

As EchoStar has explained in the original STA request, DBS channels 23 and 24 at the 61.5° W.L. orbital location have a “unique” history. In stark contrast to the vast majority of DBS spectrum, these channels have remained unassigned and unlicensed. In fact, these channels “are

¹ See *EchoStar Satellite Operating Corporation, Application for Modification of Special Temporary Authority to Operate Direct Broadcast Satellite Service over Channels 23 and 24 at the 61.5° W.L. Orbital Location*, Order and Authorization, DA 07-518, ¶ 5 (rel. Feb. 2, 2007) (“61.5 STA Order”).

the only two remaining unassigned DBS channels in the 12 GHz band that are assigned to the United States that can provide service to most of the contiguous United States.”²

In an effort to ensure that such valuable spectrum does not lie fallow, the Commission has provided STAs to DBS providers to operate on these channels for the past eight years subject to different conditions. The Commission initially granted EchoStar an STA to operate on the unassigned channels as well as to 8 channels assigned to Dominion Video Satellite, Inc. and the 11 channels assigned to Rainbow on March 21, 1998.³ Rainbow subsequently operated on the unassigned channels for a two-year period,⁴ before EchoStar acquired the Rainbow 1 satellite

² *Rainbow DBS Company, LLC and EchoStar Satellite L.L.C.*, FCC 05-177, Memorandum Opinion and Order, IB Docket No. 05-72, ¶ 29 (rel. Oct. 12, 2005) (“*Rainbow 1 Assignment Order*”).

³ *See In the Matter of Direct Broadcasting Satellite Corporation, Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 1-21 (odd) and 23-32 (odd and even) at 61.5° W.L.*, Memorandum Opinion and Order, FCC Rcd. 6392 (1998) (“*EchoStar 1998 STA Grant*”). The Commission renewed this authority on September 16, 1998. *See In the Matter of Direct Broadcasting Satellite Corporation, Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 1-21 (odd) and 23-32 (odd and even) at 61.5° W.L.*, Letter from Thomas S. Tycz to David K. Moskowitz, File No. SAT-STA-19980827-00068 (Sept. 16, 1998). The September 16, 1998 renewal of EchoStar’s STA was for 180 days, or with respect to the relevant channels, until “(2) receipt of a license by Dominion Video Satellite, Inc. or R/L DBS to begin service from the 61.5° W.L. orbital location ...” The Commission again verbally renewed the authority on March 16, 1999, imposing the same terms and conditions. *See* File No. SAT-STA-19990305-00026. Dominion received such a license in 1999 and EchoStar’s STA with respect to Dominion’s channels expired. The Commission granted renewal requests for the 11 channels assigned to Rainbow and the 2 unassigned channels in 1999, 2000, 2001, and 2002. *See* File Nos. SAT-STA-19990907-00089, SAT-STA-20000308-00066, SAT-STA-20010226-00024, SAT-STA-20010820-00076, and SAT-STA-20020220-00021. In 2003, EchoStar discontinued service on these channels within 7 days of receiving notice from the Commission that it must do so. *See* Letter from Jennifer M. Gilson, Chief, Policy Branch, Satellite Division to Pantelis Michalopoulos, Re: Request of EchoStar Satellite Corporation for Renewal of Its Special Temporary Authority to Operate a Satellite Over Channels 1-23 (odd) and 24 the 61.5° W.L. Orbital Location – File No. SAT-STA-20030214-00071 (June 13, 2003).

⁴ Rainbow DBS Company, LLC, received the STA to operate on the unassigned channels in 2003. *EchoStar Satellite Corporation and Rainbow DBS Company LLC*, Order and Authorization, 18 FCC Rcd 19825 (2003) (“*Rainbow STA Order*”).

and regained authority last year.⁵ The Commission has highlighted repeatedly “the importance of ensuring that spectrum can continue to serve the public rather than lying fallow unnecessarily, even on a temporary basis.”⁶ During the past eight years, the flexibility provided by this much-needed capacity has proven instrumental to DBS providers.

The future of these unassigned channels is, however, also subject to the uncertainty surrounding the *Northpoint* decision that vacated the Commission’s DBS auction rules, and the DBS freeze implemented by the Commission in response to that decision.⁷ As a result, a new licensee will not be in a position to provide services from these channels for a number of years. In fact, while the Commission initiated a proceeding in 2006 to establish the mechanism by which these channels could be ultimately licensed and operated, that proceeding is still pending.⁸

⁵ The Rainbow STA was assigned to EchoStar Satellite L.L.C. (“ESLLC”) in October 2005 as part of the sale of the Rainbow 1 satellite to EchoStar. *See EchoStar Satellite L.L.C.*, File No. SAT-STA-20050930-00183 (granted Sept. 30, 2005); *see also Rainbow 1 Assignment Order*. The STA was then assigned from ESLLC to EchoStar in September 2006. *See Application for Pro Forma Assignment of Licenses from EchoStar Satellite L.L.C. to EchoStar Satellite Operating Corporation*, File No. SAT-ASG-20051129-00256 (granted Sep. 13, 2006).

⁶ *Rainbow STA Order*, ¶ 8; *see also EchoStar 1998 STA Grant*, ¶ 7 (“furthering the Commission’s objective to make efficient use of available spectrum.”).

⁷ *Northpoint Technology Ltd. v. FCC*, 412 F.3d 145 (D.C. Cir. 2005) (“*Northpoint*”); Public Notice, *Direct Broadcast Satellite (DBS) Service Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications*, FCC 05-213 (rel. Dec. 21, 2005) (“*DBS Freeze Notice*”). The DBS freeze does not apply to “requests for special temporary authority.” *Id.* at 2.

⁸ *See Amendment of the Commission’s Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service in the United States*, Notice of Proposed Rulemaking, 21 FCC Rcd 9443 (2006).

In March 2006, EchoStar sought an extension of its 61.5° W.L. STA, and also requested a modification to relax the STA's customer notification requirements.⁹ On January 5, 2007, EchoStar filed a request for expedited action on the pending March 2006 STA application.¹⁰ EchoStar also sought to waive temporarily the programming condition to which the STA was subject,¹¹ because the deteriorating condition of the EchoStar 3 satellite, co-located at the 61.5° W.L. orbital location, made it necessary for EchoStar to utilize Channels 23 and 24 in order to maintain regular programming to its subscribers from 61.5° W.L.

In February 2007, the International Bureau granted EchoStar's request to renew its STA to operate Channels 23 and 24 at 61.5° W.L. and found that it would serve the public interest to suspend temporarily the customer notification and programming conditions.¹² In particular, the Bureau found that "[s]uspending these restrictions will enable EchoStar to avoid any further disruption to its customers as a result of the EchoStar 3 transponder failures. It will also avoid confusion to its customers regarding the continued availability of programming."¹³ Further, the

⁹ See File No. SAT-STA-20060324-00029. Specifically, this condition requires that EchoStar notify subscribers that the services provided using the two unassigned channels are provided pursuant to a grant of temporary authority and may be reduced or discontinued at any time. EchoStar is also required to provide billing inserts informing consumers of the services provided on these channels and the expiration date of the temporary authority for the two channels.

¹⁰ See File No. SAT-STA-20070105-00008.

¹¹ Specifically, the condition requires that: "[U]se of channels 23 and 24 at the 61.5° W.L. orbital 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 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." *Rainbow STA Order* at ¶ 18.

¹² *61.5 STA Order*, ¶ 5.

¹³ *Id.*, ¶ 6.

Bureau held that “[t]emporary 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.”¹⁴ The Bureau also imposed a reporting condition on EchoStar, which EchoStar timely satisfied.¹⁵

On March 29, 2007, filed a request to renew its STA for an additional sixty days.¹⁶ The Bureau granted this request on April 20, 2007 for one hundred and eighty days.¹⁷ In its grant, the Bureau required that EchoStar report on the status of a replacement satellite for the EchoStar 3 satellite and on the operational status of the EchoStar 3 satellite by July 3, 2007.¹⁸ EchoStar timely submitted the required report. In its report, EchoStar provided an update the replacement of the EchoStar 3 satellite and explained that the health of the EchoStar 3 satellite had not changed since its report in March, 2007. EchoStar committed to provide an update on the status of a replacement satellite for EchoStar 3 and the operational status of the EchoStar 3 satellite when it filed for renewal of the April 20, 2007 STA grant.

¹⁴ *Id.*, ¶ 7.

¹⁵ *See id.*, ¶ 15. On March 5, 2007, EchoStar submitted a letter and report in File Nos. SAT-STA-20060324-00029 and SAT-STA-20070105-00008 detailing its plans for a replacement satellite for the 61.5° W.L. orbital location and the condition of the EchoStar 3 satellite. Subsequent to the March 5, 2007 filing, an intergovernmental commission comprising representatives of Ukrainian and Russian organizations determined that the Zenit-3SL carrier rocket, used in the unsuccessful January 2007 Sea Launch operation, failed due to a metal particle entering the engine’s pump.

¹⁶ *See* File No. SAT-STA-20070329-00058.

¹⁷ *See* Grant Stamp, File No. SAT-STA-20070329-00058.

¹⁸ *See* Conditions 4 and 5 of the Grant Stamp.

II. UPDATE ON STATUS OF REPLACEMENT SATELLITE FOR ECHOSTAR 3 AND THE HEALTH OF THE ECHOSTAR 3 SATELLITE

EchoStar has not finalized its replacement plans for EchoStar 3 yet. In developing that plan, EchoStar has been faced with two complications. First, a Proton rocket carrying a Japanese spacecraft exploded shortly after takeoff on September 5, 2007. The ongoing investigation of this disaster has made launch windows even more scarce than they previously were and EchoStar has placed new launch plans and the associated redeployment of its satellite fleet temporarily on hold. Second, on June 8, 2007, EchoStar and Dominion Video Satellite, Inc. (“Dominion”) requested authority for the assignment of Dominion's license, covering eight channels at 61.5° W.L., to EchoStar. The applicants look forward to the Commission's prompt grant of this application, which was placed on public notice on June 15, 2007, and has not been approved.

There have been no further changes in the operational status of the EchoStar 3 satellite since the report EchoStar submitted on July 3, 2007.

II. GRANT OF A RENEWAL STA SUBJECT TO THE SAME TEMPORARY SUSPENSION OF THE CUSTOMER NOTIFICATION AND PROGRAMMING CONDITIONS WOULD CONTINUE TO SERVE THE PUBLIC INTEREST

The same conditions that led the Bureau to grant renewal of the STA for channels 23 and 24 and to temporarily suspend the customer notification and programming conditions for the STA in the *61.5° STA Order* are still applicable. EchoStar 3 continues to operate at diminished capacity due to the earlier transponder failures. As a result, EchoStar still needs to utilize Channels 23 and 24 to maintain regular programming from the 61.5° W.L. orbital location. Further, for the reasons explained above, EchoStar has not yet deployed a replacement satellite capable of serving all the assigned and leased channels at the 61.5° W.L. orbital location, and has not yet finalized the replacement plans. Thus, grant of a renewal STA subject to the same temporary suspension of the customer notification and programming conditions will continue to

“enable EchoStar to avoid any further disruption to its customers as a result of the EchoStar 3 transponder failures” and “will give EchoStar greater flexibility to meet its customers’ needs until it is able to launch its planned replacement satellite.”

III. CONCLUSION

For the foregoing reasons, EchoStar requests that Commission renew its STA to operate on Channels 23 and 24 for an additional one hundred and eighty days subject to the same terms and conditions provided for in the *61.5° STA Order*.

Respectfully submitted,

EchoStar Satellite Operating Corporation

/s/

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September 26, 2007