

EchoStar Corporation

Approved by OMB
3060-0678

Date & Time Filed: Sep 23 2008 1:42:44:803PM
File Number: SAT-STA-20080923-00193
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 to Renew STA To Operate on Channels 23 and 24 at 61.5 W.L.

1. Applicant

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Country:	USA	Zipcode:	80112 -
Attention:	Linda Kinney - (202)293-0981		



File # SAT-STA-2008092300193
 Call Sign Grant Date 11/7/08
 (or other identifier)
 From 9/30/08 To: 3/30/09
 Approved: [Signature]

with conditions

Attachment
File No. SAT-STA-20080923-00193

EchoStar Corporation's request, File No. SAT-STA-20080923-00193, IS GRANTED, and EchoStar 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 September 30, 2008 to March 30, 2009, 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 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 December 30, 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 replacement satellite, as well as the status of the associated launch vehicle.

5. EchoStar must file a report on December 30, 2008 describing any change to the operating status since EchoStar filed its Status Report for the EchoStar 3 satellite on Jun 30, 2008.

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.

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

In the Matter of)	
)	
ECHOSTAR CORPORATION)	File No. SAT-STA-20060324-00029
)	File No. SAT-STA-20070105-00008
Request for Renewal of Special Temporary)	File No. SAT-STA-20070329-00058
Authority to Operate a Direct Broadcast Satellite)	File No. SAT-STA-20070926-00133
Over Channels 23 and 24 At the 61.5° W.L.)	File No. SAT-STA-20080325-00082
Orbital Location)	File No. SAT-STA-20080923-_____
)	

REQUEST FOR RENEWAL OF SPECIAL TEMPORARY AUTHORITY

EchoStar 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 180 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 will continue to serve the public interest.

I. BACKGROUND AND PROCEDURAL HISTORY

As EchoStar’s predecessor-in-interest, EchoStar Satellite Operating Corporation (“ESOC”) 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 the only

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, 22 FCC Rcd 2223, ¶ 5 (rel. Feb. 2, 2007) (“61.5 STA Order”).

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 ten years subject to different conditions. The Commission initially granted EchoStar’s predecessor an STA to operate on the unassigned channels as well as 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 ESOC acquired the Rainbow

² *Rainbow DBS Company, LLC and EchoStar Satellite L.L.C.*, Memorandum Opinion and Order, 20 FCC Rcd 16868, ¶ 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, 13 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 seven days of receiving notice from the Commission that it must do so. *See* Letter from Jennifer M. Gilsean, 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*”).

1 satellite and regained authority in 2005.⁵ On January 1, 2008, ESOC assigned the STA to EchoStar as part of a *pro forma* corporate reorganization under which ESOC's parent, EchoStar Communications Corporation, spun off its wholly-owned subsidiary, EchoStar.⁶ 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."⁷ During the past ten 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.⁸ As a result, a new licensee will not be in a position to provide services from these channels for a number of years.

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 Satellite Operating Corporation ("ESOC") 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 *See* Public Notice, DA 07-4655 (rel. Nov. 16, 2007) (consenting to the transfer of several authorizations as part of the Spin-Off).

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

⁸ *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.

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.⁹

In March 2006, ESOC sought an extension of its 61.5° W.L. STA, and also requested a modification to relax the STA's customer notification requirements.¹⁰ On January 5, 2007, ESOC filed a request for expedited action on the pending March 2006 STA application.¹¹ ESOC also sought to waive temporarily the programming condition to which the STA was subject,¹² because the deteriorating condition of the EchoStar 3 satellite, co-located at the 61.5° W.L. orbital location, made it necessary for ESOC 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 ESOC'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

⁹ 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).

¹⁰ See File No. SAT-STA-20060324-00029. Specifically, this condition required that ESOC 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. ESOC was 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.

¹¹ See File No. SAT-STA-20070105-00008.

¹² 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.

suspend temporarily the customer notification and programming conditions.¹³ 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.”¹⁴ Further, the 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.”¹⁵

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.

Since the March 2008 failure of EchoStar 3’s intended replacement, AMC-14, to reach orbit, EchoStar has been actively considering other possible plans for relieving EchoStar 3 at 61.5° W.L. These plans are complicated by the scarcity of rocket “launch windows,” which in turn makes it that much more difficult to free up and redeploy existing satellites. EchoStar will report to the Commission as soon as it decides on such action.

¹³ *61.5 STA Order*, ¶ 5.

¹⁴ *Id.*, ¶ 6.

¹⁵ *Id.*, ¶ 7.

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,” or bring its launched replacement satellite into use.

III. CONCLUSION

The Commission should renew the STA to operate on Channels 23 and 24 for an additional 180 days subject to the same terms and conditions provided for in the *61.5° STA Order*.

Respectfully submitted,

/s/

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September 23, 2008

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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 SATSTA2008032500082 or Submission ID			
4a. Is a fee submitted with this application?			
<input checked="" type="radio"/> If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).			
<input type="radio"/> Governmental Entity <input type="radio"/> Noncommercial educational licensee			
<input type="radio"/> Other (please explain):			
4b. Fee Classification			
5. Type Request			
<input checked="" type="radio"/> Change Station Location <input type="radio"/> Extend Expiration Date <input type="radio"/> Other			
6. Temporary Orbit Location			7. Requested Extended Expiration Date
			2009-03-26 00:00:00.0

<p>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.)</p> <div style="border: 1px solid black; padding: 5px;"> <p>This application requests renewal of EchoStar Corporation's special temporary authority to operate a DBS satellite using channels 23 and 24 at the 61.5 W.L. orbital location for an additional 180 days. Please see the attached narrative.</p> </div>					
<p>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.</p> <p style="text-align: right;"> <input checked="" type="radio"/> Yes <input type="radio"/> No </p>					
<p>10. Name of Person Signing Linda Kinney</p>	<p>11. Title of Person Signing Vice President, Law and Regulation</p>				
<p>12. Please supply any need attachments.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Attachment 1: STA Narrative</td> <td style="width: 50%;">Attachment 2:</td> </tr> <tr> <td></td> <td>Attachment 3:</td> </tr> </table>		Attachment 1: STA Narrative	Attachment 2:		Attachment 3:
Attachment 1: STA Narrative	Attachment 2:				
	Attachment 3:				
<p>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).</p>					

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