

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

In the Matter of	)	File No. SAT-STA-20060324-00029
	)	File No. SAT-STA-20070105-00008
<b>ECHOSTAR CORPORATION</b>	)	File No. SAT-STA-20070329-00058
	)	File No. SAT-STA-20070926-00133
Request for Renewal of Special Temporary	)	File No. SAT-STA-20080325-00082
Authority to Operate a Direct Broadcast Satellite	)	File No. SAT-STA-20080923-00193
Over Channels 23 and 24 at the 61.5° W.L.	)	File No. SAT-STA-20090325-00038
Orbital Location	)	File No. SAT-STA-20090821-00092
	)	File No. SAT-STA-2010____-_____

**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.<sup>1</sup> 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.<sup>2</sup> Consistent with that Bureau decision, grant of this renewal request will continue to serve the public interest.

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<sup>1</sup> On February 3, 2010, EchoStar requested authority to operate its EchoStar 6 satellite at the 61.65° W.L. as an in-orbit spare and to activate the communications payload as needed. File No. SAT-LOA-20100203-00019 (filed Feb. 3, 2010) (“*EchoStar 6 Application*”). In that application, EchoStar requested authority to operate the satellite “on any and all channels that are licensed to EchoStar under permanent authority or STA,” including channels 23 and 24. *Id.*, Narrative at 3. EchoStar incorporates the information provided in that application by reference.

<sup>2</sup> 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*”). See also Stamp Grant, File No. SAT-STA-20090821-00092, at 2-3 (granted Dec. 4, 2009).

## 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 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."<sup>3</sup>

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 eleven 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.<sup>4</sup> Rainbow subsequently operated on the unassigned channels for a two-year period,<sup>5</sup> before ESOC acquired

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<sup>3</sup> *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*").

<sup>4</sup> *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*"). For a full description of the regulatory history of these channels, see File No. SAT-STA-20090821-00092, Narrative, at n. 4 (filed Aug. 21, 2009).

<sup>5</sup> 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*").

the Rainbow 1 satellite and regained authority in 2005.<sup>6</sup> 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.<sup>7</sup> 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."<sup>8</sup> During the past eleven 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.<sup>9</sup> 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

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<sup>6</sup> 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).

<sup>7</sup> *See* Public Notice, DA 07-4655 (rel. Nov. 16, 2007) (consenting to the transfer of several authorizations as part of the Spin-Off).

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

<sup>9</sup> *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.

which these channels could be ultimately licensed and operated, that proceeding is still pending.<sup>10</sup>

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.<sup>11</sup> On January 5, 2007, ESOC filed a request for expedited action on the pending March 2006 STA application.<sup>12</sup> ESOC also sought to waive temporarily the programming condition to which the STA was subject,<sup>13</sup> 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

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<sup>10</sup> 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).

<sup>11</sup> 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.

<sup>12</sup> See File No. SAT-STA-20070105-00008.

<sup>13</sup> 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.<sup>14</sup> 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.”<sup>15</sup> 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.”<sup>16</sup>

## **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. As EchoStar informed the Commission in its *EchoStar 6 Application*, the EchoStar 3 satellite recently lost additional transponder capacity.<sup>17</sup> EchoStar has contracted with Space

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<sup>14</sup> *61.5 STA Order*, ¶ 5.

<sup>15</sup> *Id.* ¶ 6.

<sup>16</sup> *Id.* ¶ 7. The Bureau has since granted EchoStar’s request for renewal of the STA three times. See File No. SAT-STA-20080923-00193; File No. STA-20090325-00038; File No. SAT-STA-20090821-00092.

<sup>17</sup> *EchoStar 6 Application*, Narrative at 1.

Systems/Loral for the construction of EchoStar 15, a 32-transponder-capable DBS satellite that, in light of the loss of AMC-14, will effectively replace EchoStar 3 at 61.5° W.L.<sup>18</sup> EchoStar 15 is expected to be ready for launch by the fourth quarter of 2010.

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.”<sup>19</sup>

### 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,

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/s/

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<sup>18</sup> See *In re EchoStar Corporation: Status Report on EchoStar 3 (Redacted)*, File No. SAT-STA-20090821-00092 (filed Dec. 30, 2009).

<sup>19</sup> *61.5 STA Order*, ¶ 5.