

explained in the EchoStar 15 Application, EchoStar 15 will ultimately replace EchoStar 3 and supplement EchoStar 12, which both currently operate at the nominal 61.5° W.L. orbital location. For the same reasons described in that application and incorporated herein by reference, so too will the requested STA serve the public interest. The “CONUS-plus” capability of EchoStar 15 will increase the capacity of EchoStar’s customer, DISH Network Corporation (“DISH”), to provide High Definition programming to subscribers, and its advanced spot-beam technology will enhance DISH’s ability to provide local-into-local stations across the country. The requested STA will ensure EchoStar is able to bring the technically advanced satellite into service as soon as possible to improve the services available to its customers while its pending application is under consideration.

The proposed operations will not increase interference into any other operator because the only satellites operating at the nominal 61.5° W.L. orbital location that may be affected are EchoStar’s own satellites as demonstrated in the Technical Narrative submitted with the EchoStar 15.

II. TECHNICAL REQUIREMENTS OF PART 25

The technical information for the EchoStar 15 satellite required to be submitted pursuant to Part 25 of the Commission’s Rules was set forth in the Technical Narrative, FCC Form 312, and Schedule S of the EchoStar 15 Application, and is incorporated herein by reference.³

III. OPERATION OVER FREQUENCY CHANNELS 23 and 24

³ EchoStar 15 Application, Technical Narrative, FCC Form 312, Schedule S.

EchoStar currently operates over all 32 DBS channels at the 61.5° W.L. orbital location. Specifically, EchoStar holds permanent authority to operate over channels 1-22 and 25-32.⁴ EchoStar uses the remaining two channels, channels 23 and 24, under STA.⁵

The STA is conditioned with a requirement 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.⁶ The condition was originally placed on EchoStar's predecessor-in-interest, Rainbow DBS, when it obtained an STA for the two channels shortly before the Commission was to assign the two channels through its then-existing DBS licensing process. That licensing process has since been invalidated and the future licensing process for these unassigned channels is also subject to the uncertainty surrounding the *Northpoint* decision that vacated the Commission's DBS auction rules, and the

⁴ Originally, channels 2-22 (even) were licensed to DBSC. Application of Direct Broadcasting Satellite Corp., *Memorandum Opinion and Order*, 8 FCC Rcd. 7959 (1993). Those 11 channels were then assigned to EchoStar's predecessor. See Application of Direct Broadcasting Satellite Corp. for Assignment of Direct Broadcast Satellite Orbital Positions and Channels, *Order*, 11 FCC Rcd. 10494 (1996). Channels 1-21 (odd) were assigned to EchoStar by Rainbow DBS, and channels 25-32 were assigned by Dominion in 2006. See Rainbow DBS Company, LLC, *Memorandum Opinion and Order*, 20 FCC Rcd. 16868 (2005); EchoStar Satellite Operating Corporation, File No. SAT-ASG-20070608-00081 (grant stamped Sept. 27, 2007), respectively.

⁵ See EchoStar Satellite Operating Corporation, *Order and Authorization*, 22 FCC Rcd. 2223 (2007); EchoStar Corporation, File No. SAT-STA-20090821-00092 (grant stamped Dec. 3, 2009); EchoStar Corporation, File No. SAT-STA-20100226-0637 (grant stamped April 6, 2010) (STA valid until September 24, 2010).

⁶ EchoStar 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.

DBS freeze implemented by the Commission in response to that decision.⁷ As a result, any 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

In February 2007, following the *Northpoint* decision and the failure of transponders on EchoStar 3, the Commission temporarily suspended the condition.⁹ 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.”¹⁰ 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.”¹¹ The temporary suspension lasts until the launch and operation of a replacement satellite for EchoStar 3, which is the EchoStar 15 satellite.

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).

⁹ *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 (2007) (“*61.5 STA Order*”).

¹⁰ *Id.* ¶ 6.

¹¹ *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.

Reinstitution of the condition at this time, however, serves no purpose because there is no process by which the channels can be permanently assigned in the short-term, making EchoStar the only potential party that can make use of the spectrum. In addition, the public interest rationale for suspending the condition – avoiding confusion to customers regarding the continued availability of programming – still applies; DISH customers should not be made to believe that they are going to lose the channels unnecessarily. Consequently, EchoStar respectfully requests that the temporary suspension of the condition stay in place until the Commission establishes a process for licensing the two channels. At that time, the notice to consumers would become relevant again. Until then, the notice serves no purpose and simply creates undue confusion.

IV. CONCLUSION

For the foregoing reasons, EchoStar respectfully requests that the Commission grant special temporary authority to operate the EchoStar 15 satellite at 61.55° W.L. In addition, EchoStar requests that the Commission extend the temporary suspension of the notice condition for its STA to use channels 23 and 24. While EchoStar 15 is operating under STA at 61.55° W.L., EchoStar will abide by the following conditions:

1. All operations at 61.55° W.L. shall be on a non-harmful interference basis, meaning that EchoStar shall not cause interference to, and shall not claim protection from, interference caused to it by any other lawfully operating satellites.
2. In the event that any harmful interference is caused while the satellite is operating at 118.9° W.L., EchoStar shall cease operations immediately upon notification of such interference and shall inform the Commission, in writing, of such event.

Respectfully submitted,

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