

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

In the Matter of)	
)	
EchoStar Corporation)	
)	
Application for Special Temporary Authority)	IBFS File No. SAT-STA-20100615-00134
to Operate the EchoStar 15 Satellite on Channels)	
23 and 24 at the 61.55° W.L. Orbital Location)	Call Sign S2811

ORDER AND AUTHORIZATION

Adopted: August 18, 2010

Released: August 18, 2010

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. With this Order, we grant EchoStar Corporation (EchoStar) special temporary authority (STA) to operate its recently launched Direct Broadcast Satellite (DBS) space station, EchoStar 15, on two unassigned channels -- channels 23 and 24 -- at the 61.55° W.L. orbital location for a period of 30 days, subject to certain conditions. At the same time, we restore the customer notification and programming content conditions for these two channels that had been previously suspended¹ and deny EchoStar's request to further suspend those conditions.

II. BACKGROUND

2. EchoStar is authorized to operate on 30 of the 32 DBS channels at the 61.5° W.L. orbital location.² The other two channels -- channels 23 and 24 -- are not assigned to any DBS licensee.

¹ See EchoStar Satellite Operating Corporation Application 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, *Order and Authorization*, DA 07-518, 22 FCC Rcd 2223, 2225, at para. 7 (Int'l Bur. 2007) (*2007 STA Order*).

² Originally, channels 2-22 (even) were licensed to DBSC, EchoStar's predecessor-in-interest. Application of Direct Broadcasting Satellite Corp., *Memorandum Opinion and Order*, 8 FCC Rcd. 7959 (1993); 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. See 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, 26882 para. 33 (2005) (*Rainbow Assignment Order*) (special temporary authority for channels 23 and 24 at the 61.5° W.L. orbital location assigned from Rainbow DBS to EchoStar, together with operating authority for EchoStar 12, formerly named Rainbow 1). Channels 25-32 were assigned from Dominion Video Satellite, Inc. to EchoStar in 2007. See Policy Branch Information, Actions Taken, *Public Notice*, Report No. SAT-00474, DA No. 07-4164 (Oct. 5, 2007) (IBFS File No. SAT-ASG-20070608-00081).

EchoStar is authorized to operate and is operating three co-located satellites -- EchoStar 3, EchoStar 6, and EchoStar 12 -- over the two unassigned channels at the 61.5° W.L. orbital location pursuant to STA.³

3. EchoStar's temporary authority to operate on the two unassigned channels includes several conditions that have been in place for more than a decade.⁴ The conditions reflect that the channels are not yet regularly assigned to any licensee. One of the 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. The other condition limits the programming EchoStar can provide to "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."⁵ This condition prohibits EchoStar from providing any programming that customers may expect to be provided on a continuing basis. At the same time, it allows EchoStar to provide stand-alone, single broadcasts, such as pay-per-view.

4. In 2007, the International Bureau granted EchoStar's request for a temporary suspension of the two conditions. In requesting the temporary suspension, EchoStar stated that transponder failures on EchoStar 3 required it to remove some regular programming from its service offerings transmitted from the 61.5° W.L. orbital location. To maintain service to its customers, EchoStar sought authority to use the two unassigned channels at 61.5° W.L. orbital location to provide regular service -- as opposed to stand-alone, single broadcasts. To avoid confusion to customers, EchoStar also sought suspension of the customer notification provision. EchoStar stated it would agree to the reinstatement of the customer notification and programming conditions once it had a replacement satellite at that location that was fully functional.⁶ The Bureau found that the continuing degradation of transponders on the EchoStar 3 satellite justified a temporary suspension of the conditions, pending the launch of a planned replacement satellite later that year.

5. Subsequently, EchoStar encountered difficulty in launching and operating a replacement satellite for EchoStar 3 at the 61.5° W.L. orbital location. This included the launch failure of the AMC-14 satellite,⁷ and transponder failures on the EchoStar 12 satellite. For those reasons, the Satellite Division extended the temporary suspension of the two conditions when authorizing the EchoStar 6 satellite to

³ The station-keeping box authorized for the EchoStar 15 satellite is centered at the 61.55° W.L. orbital location. See IBFS File no SAT-LOA-20100310-00043. The other three co-located EchoStar satellites are authorized with station-keeping boxes centered within ± 0.2 degree of the 61.5° W.L. orbital location. For ease of reference in this order, we generally refer to the 61.5° W.L. orbital location. *Rainbow Assignment Order*, 20 FCC Rcd at 16882 para. 33 (STA for two channels assigned from Rainbow to EchoStar, thereby granting authority for EchoStar 3, already at the 61.5° W.L. orbital location, to operate on channels 23 and 24, as well as continuing STA for Rainbow 1/EchoStar 12). Operating authority for EchoStar 6 at the 61.5° W.L. orbital location was granted earlier this year. See IBFS File No. SAT-STA-20100203-00020 (EchoStar 6 authority granted March 3, 2010).

⁴ 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*, DA 98-544, 13 FCC Rcd 6392, 6395 ¶ 9 (Int'l Bur. 1998) (*1998 EchoStar STA Order*); EchoStar Satellite Corporation, Application 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*).

⁵ *Rainbow STA Order*, 18 FCC Rcd at 19828 para. 9.

⁶ *2007 STA Order*, 23 FCC Rcd at 2225 para. 6 (citing EchoStar's January 2007 Application at 7: "EchoStar agrees to the reinstatement of these conditions once the replacement satellite is capable of operating on all licensed and leased channels at 61.5° W.L").

⁷ See IBFS File No. SAT-LOA-20071221-00183.

supplement EchoStar's DBS service at the 61.5° W.L. orbital location.⁸ The EchoStar 6 grant also noted, however, that the customer notification and programming conditions would be reinstated upon launch and operation of a replacement satellite.

III. DISCUSSION

6. On June 15, 2010, EchoStar filed an application seeking 60-day special temporary authority to operate its EchoStar 15 satellite at the 61.55° W.L. orbital location on channels 23 and 24. In the STA request, EchoStar requested a continued suspension of the customer notice condition. On July 30, 2010, EchoStar filed a letter limiting the request for special temporary authority to 30 days.

7. As EchoStar acknowledges, the EchoStar 15 satellite is the replacement for the EchoStar 3 satellite at the 61.5° W.L. orbital location.⁹ Nevertheless, EchoStar argues that the customer notification condition should remain suspended until the Commission establishes a process for assigning channels 23 and 24. We are not persuaded that there is good cause for further suspension of either of the two conditions that were imposed on EchoStar 3.

8. The Bureau has stated, throughout the more than three years that the conditions have been suspended on EchoStar 3, that the conditions would be reinstated when EchoStar launched a satellite to replace EchoStar 3 at the 61.5° W.L. orbital location. The Bureau suspended the conditions to allow EchoStar to use channels 23 and 24 to make up for the capacity lost by transponder failures on EchoStar 3. This allowed EchoStar to provide regular programming on channels 23 and 24, and avoid disruption to its program offerings. The Bureau reasoned that once EchoStar launched a fully functional replacement satellite into this location, it would no longer need to use the extra channels in this manner. Thus, the Bureau stated it would reinstate the conditions once EchoStar launched a fully functional satellite into the 61.5° W.L. orbital location. EchoStar agreed to reinstatement of these conditions. EchoStar 15 has been launched and is capable of operating on all licensed channels at the 61.55° W.L. orbital location. EchoStar has not provided us with any reason to suspend the conditions indefinitely. The status of the Commission's licensing process for these channels does not affect the temporary nature of EchoStar's authority to use the channels. Indeed, as the Bureau noted in the *2007 STA Order*, the re-imposed conditions will ensure that EchoStar and its customers are made fully aware of the temporary nature of service from these two channels. Accordingly, we decline to further suspend the conditions.

IV. CONCLUSION AND ORDERING CLAUSES

9. For the foregoing reasons, we find that the public interest, convenience and necessity will be served by allowing EchoStar to operate, on a temporary basis, its DBS space station, EchoStar 15 on channels 23 and 24 at the 61.55° W.L. orbital location, subject to the conditions imposed herein.

10. Accordingly, IT IS ORDERED that EchoStar Corporation's Application for Special Temporary Authority to Operate Direct Broadcast Satellite Service over Channels 23 and 24 at the 61.55° W.L. Orbital Location, IBFS File No. SAT-STA-20100615-00134 IS GRANTED, IN PART, and EchoStar Corporation may provide service pursuant to this Special Temporary Authorization for 30 days commencing on August 19, 2010.

11. IT IS FURTHER ORDERED that EchoStar Corporation's use of channels 23 and 24 at the 61.55° 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.

⁸ See IBFS File No. SAT-STA-20100203-00020 (Granted March 3, 2010).

⁹ IBFS File No. SAT-STA-20100615-00134 at 4.

12. IT IS FURTHER ORDERED that EchoStar Corporation 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 Satellite Operating Corporation's operation on channels 23 and 24 is at its own risk.

13. IT IS FURTHER ORDERED that:

1) EchoStar Corporation:

a) must inform its customers, in writing, that services using the two unassigned channels at the 61.5° W.L. orbital 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 using the two unassigned channels 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. 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 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.

14. IT IS FURTHER ORDERED that EchoStar 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.

15. 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).

16. 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.

17. EchoStar 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.

18. 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

A handwritten signature in black ink, appearing to be 'R. Nelson', with a long, sweeping horizontal line extending to the right.

Robert G. Nelson
Chief
Satellite Division
International Bureau