

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

In the Matter of)	
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ECHOSTAR SATELLITE OPERATING CORPORATION)	File No. SAT-STA-2011____ - _____
)	Call Sign S2811
)	
Request for Special Temporary Authority to Operate the EchoStar 15 Satellite Over Channels 23 and 24 at the 61.55° W.L. Orbital Location)	
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REQUEST FOR SPECIAL TEMPORARY AUTHORITY

EchoStar Satellite Operating Corporation (“ESOC”) requests special temporary authority (“STA”) to operate the EchoStar 15 satellite on the Direct Broadcast Satellite (“DBS”) Channels 23 and 24 at the 61.55° W.L. orbital location for the remainder of the STA period granted to ESOC’s parent, EchoStar Corporation (“EchoStar”) – i.e., until October 13, 2011.¹ EchoStar recently received authority to assign the EchoStar 15 satellite and all associated authorizations to ESOC on a *pro forma* basis.² For the reasons set forth below, grant of this request will serve the public interest.

¹ See Stamp Grant, File No. SAT-STA-20110303-00048 (granted Apr. 19, 2011).

² See File No. SAT-ASG-20110224-00033 (granted Apr. 21, 2011). As noted in EchoStar’s application for *pro forma* assignment of the satellite, it received the approval of its board of directors to assign its space station and earth station facilities upon Commission consent. See File No. SAT-ASG-20110224-00033, Narrative at 2 (filed Feb. 24, 2011). EchoStar filed a notice of consummation of the *pro forma* transaction on May 23, 2011. See Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC (May 23, 2011), filed in File Nos. SAT-ASG-20110224-00033, SAT-ASG-20110224-00034, SAT-ASG-20110224-00035.

I. BACKGROUND AND PROCEDURAL HISTORY

As EchoStar has previously described to the Commission, DBS Channels 23 and 24 at the nominal 61.5° W.L. orbital location have a unique history.³ 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.”⁴

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.⁵ 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.⁶

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 thirteen years subject to

³ See File No. SAT-STA-20110303-00048 (filed Mar. 3, 2011).

⁴ Rainbow DBS Company, LLC and EchoStar Satellite L.L.C., *Memorandum Opinion and Order*, 20 FCC Rcd. 16868, ¶ 29 (2005) (“*Rainbow 1 Assignment Order*”).

⁵ *Northpoint Technology Ltd. v. FCC*, 412 F.3d 145 (D.C. Cir. 2005); 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). The DBS freeze does not apply to “requests for special temporary authority.” *Id.* at 2.

⁶ 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).

different conditions. The Commission initially granted ESOC's predecessor-in-interest an STA to operate on Channels 23 and 24, as well as 8 channels assigned to Dominion Video Satellite, Inc. and the 11 channels assigned to Rainbow DBS Company, LLC ("Rainbow") on March 21, 1998.⁷ Rainbow subsequently operated on Channels 23 and 24 pursuant to STA for a two-year period⁸ before ESOC's predecessor-in-interest acquired the Rainbow 1 satellite and regained authority in 2005.⁹ On January 1, 2008, ESOC's predecessor-in-interest assigned the STA to EchoStar as part of a *pro forma* corporate reorganization under which EchoStar Communications Corporation spun off its wholly-owned subsidiary, EchoStar.¹⁰ 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."¹¹ During the past thirteen years, the flexibility provided by this much-needed capacity has proven instrumental to DBS providers.

⁷ See 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 (granted Dec. 1, 2009).

⁸ Rainbow received STA (the "Rainbow 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*").

⁹ 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 Stamp Grant, File No. SAT-STA-20050926-00183 (granted Sept. 30, 2005); see also *Rainbow 1 Assignment Order*. The STA was then assigned from ESLLC to an affiliate, EchoStar Satellite Operating Corporation ("old 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).

¹⁰ See Public Notice, Policy Branch Information Actions Taken, DA 07-4655 (rel. Nov. 16, 2007) (consenting to the transfer of several authorizations as part of the spin-off).

¹¹ *Rainbow STA Order* ¶ 8; see also *EchoStar 1998 STA Grant* ¶ 7 ("furthering the Commission's objective to make efficient use of available spectrum").

II. GRANT OF THIS REQUEST WOULD SERVE THE PUBLIC INTEREST

On July 10, 2010, EchoStar successfully launched EchoStar 15, a 32-transponder-capable DBS satellite that, in light of the loss of AMC-14,¹² effectively replaced EchoStar 3 at the nominal 61.5° W.L. orbital location. EchoStar 15 became fully operational on August 5, 2010.¹³ The two unassigned Channels 23 and 24 have been operated on EchoStar 15 subject to STA. In its last STA request (granted April 11, 2011) EchoStar indicated that the STA would be subject to its then-pending application for Commission authority to assign the satellite and all associated authorizations on a *pro forma* basis to its wholly owned subsidiary, ESOC.¹⁴ EchoStar received that *pro forma* authorization on April 21, 2011, and has consummated the transaction.¹⁵ ESOC, therefore, now seeks authority to operate EchoStar 15 over Channels 23 and 24 for the remaining period of EchoStar's STA. In the event of a technical failure on EchoStar 15, ESOC intends to apply for a renewal STA for the EchoStar 12 satellite to provide continuous service to its customer on the two channels.

As explained in the original EchoStar 15 STA application, which is hereby incorporated by reference, the "CONUS-plus" capability of EchoStar 15 increases the capacity of ESOC's

¹² See Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC (Dec. 30, 2008), *filed in* File No. SAT-STA-20080923-00193).

¹³ See Letter from Christopher R. Bjornson, Counsel for DISH Operating L.L.C. to Robert Nelson, Chief, Satellite Division, International Bureau, Federal Communications Commission (Aug. 6, 2010), *filed in* File No. SAT-LOA-20100310-00043.

¹⁴ See Stamp Grant, File No. SAT-STA-20110303-00048 (granted Apr. 19, 2011). This application was filed subject to the proposed *pro forma* assignment.

¹⁵ See File No. SAT-ASG-20110224-00033 (granted Apr. 21, 2011). See also, Letter from Pantelis Michalopoulos, Counsel for EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC (May 23, 2011), *filed in* File Nos. SAT-ASG-20110224-00033, SAT-ASG-20110224-00034, SAT-ASG-20110224-00035.

customer, DISH Network L.L.C. (“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.¹⁶ The requested STA will continue to ensure improved services are available to its customers. ESOC agrees to comply with the conditions set forth in the original order authorizing EchoStar to operate EchoStar 15 over Channels 23 and 24.¹⁷

III. WAIVER PURSUANT TO SECTION 304 OF THE ACT

In accordance with Section 304 of the Communications Act of 1934, as amended, 47 U.S.C. § 304, ESOC hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

IV. CONCLUSION

For the foregoing reasons, ESOC respectfully requests the grant of its application for special temporary authority to operate the EchoStar 15 satellite at the 61.55° W.L. orbital location on Channels 23 and 24 for the period remaining on EchoStar’s STA grant – i.e., until October 13, 2011.

Respectfully submitted,

/s/

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¹⁶ See File No. SAT-STA-20100615-00134, Narrative at 2 (filed June 15, 2010).

¹⁷ EchoStar Corporation, Application for Special Temporary Authority to Operate the EchoStar 15 Satellite on Channels 23 and 24 at the 61.55° W.L. Orbital Location, *Order and Authorization*, 25 FCC Rcd. 10980, ¶¶ 9-17 (2010).

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