

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

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In the Matter of	)	
	)	
	)	File No. SAT-STA-20120227-00023
<b>ECHOSTAR SATELLITE OPERATING</b>	)	File No. SAT-STA-2012____-____
<b>CORPORATION</b>	)	Call Sign S2811
	)	
Request for Renewal of Special Temporary	)	
Authority to Operate the EchoStar 15 Satellite	)	
Over Channels 23 and 24 at the 61.65° W.L.	)	
Orbital Location	)	
	)	

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**REQUEST FOR RENEWAL OF SPECIAL TEMPORARY AUTHORITY**

EchoStar Satellite Operating Corporation (“ESOC”) requests renewal of its special temporary authority (“STA”) to operate the EchoStar 15 satellite on the Direct Broadcast Satellite (“DBS”) channels 23 and 24 at the 61.65° W.L. orbital location for an additional 180 days.<sup>1</sup> The current STA expires on October 9, 2012.<sup>2</sup> For the reasons set forth below, grant of this request will serve the public interest.

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<sup>1</sup> See File Nos. SAT-STA-20110909-00176 (granted Oct. 18, 2011); SAT-STA-20110525-00096 (granted May 27, 2011). Following the *pro forma* assignment of the EchoStar 15 satellite from EchoStar Corporation (“EchoStar”) to ESOC, ESOC requested and was granted authority to operate EchoStar 15 on DBS channels 23 and 24 at the 61.55° W.L. orbital location for the remainder of EchoStar’s authorization. See *id*; File No. SAT-STA-20110303-00048 (granted Apr. 19, 2011) (renewing EchoStar’s STA to operate EchoStar 15 on DBS channels 23 and 24 at 61.55° W.L.).

<sup>2</sup> See Stamp Grant, File No. SAT-STA-20110227-00023 (granted Apr. 18, 2012).

## I. BACKGROUND AND PROCEDURAL HISTORY

As ESOC has previously described to the Commission, DBS channels 23 and 24 at the nominal 61.5° W.L. orbital location have a unique history.<sup>3</sup> 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>4</sup>

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>5</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 which these channels could be ultimately licensed and operated, that proceeding is still pending.<sup>6</sup>

In an effort to ensure that such valuable spectrum does not lie fallow, the Commission has provided STA to DBS providers to operate on these channels for thirteen years subject to different conditions. On March 21, 1998, the Commission granted ESOC’s predecessor-in-interest STA to operate on channels 23 and 24, as well as 8 channels assigned to Dominion

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<sup>3</sup> *See id.*

<sup>4</sup> Rainbow DBS Company, LLC and EchoStar Satellite L.L.C., *Memorandum Opinion and Order*, 20 FCC Rcd. 16868, 16880 ¶ 29 (2005) (“*Rainbow I Assignment Order*”).

<sup>5</sup> *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) (stating that the DBS freeze does not apply to “requests for special temporary authority”).

<sup>6</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).

Video Satellite, Inc. and 11 channels assigned to Rainbow DBS Company, LLC (“Rainbow”).<sup>7</sup> Rainbow subsequently operated on channels 23 and 24 pursuant to STA for a two-year period<sup>8</sup> before ESOC’s predecessor-in-interest acquired the Rainbow 1 satellite in 2005.<sup>9</sup> 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.<sup>10</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>11</sup> During the past thirteen years, the flexibility provided by this much-needed capacity has proven instrumental to DBS providers.

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<sup>7</sup> 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).

<sup>8</sup> 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*”).

<sup>9</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 Stamp Grant, File No. SAT-STA-20050926-00183 (granted Sept. 30, 2005); see also *Rainbow 1 Assignment Order*, 20 FCC Rcd. 16868. 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).

<sup>10</sup> 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).

<sup>11</sup> *Rainbow STA Order*, 18 FCC Rcd. at 19828 ¶ 8; see also *EchoStar 1998 STA Grant*, 13 FCC Rcd. at 6394 ¶ 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,<sup>12</sup> effectively replaced EchoStar 3 at the nominal 61.5° W.L. orbital location. EchoStar 15 became fully operational on August 5, 2010.<sup>13</sup> The two unassigned channels 23 and 24 have been operating on EchoStar 15 subject to STA. In the event of a technical failure on EchoStar 15, ESOC intends to apply to renew its 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 filed by EchoStar, which is hereby incorporated by reference, the “CONUS-plus” capability of EchoStar 15 increases the capacity of ESOC’s customer, DISH Network L.L.C. (“DISH”), to provide High Definition programming to subscribers, and its advanced spot-beam technology enhances DISH’s ability to provide local-into-local stations across the country.<sup>14</sup> The requested STA will continue to ensure these services continue to be 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.<sup>15</sup>

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<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> See File No. SAT-STA-20100615-00134, Narrative at 2 (filed June 15, 2010).

<sup>15</sup> See Stamp Grant, File No. SAT-STA-20110525-00096 (granted May 27, 2011); 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, 10982-83 ¶¶ 9-17 (2010).

### 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 renewal of its special temporary authority to operate the EchoStar 15 satellite at the 61.65° W.L. orbital location on channels 23 and 24 for an additional 180 days.

Respectfully submitted,

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/s/

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