

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

\_\_\_\_\_) )  
In the Matter of ) )  
EchoStar Corporation ) )  
Petition for Waiver of ) )  
Application Fees Pursuant to ) )  
Section 1.1117 of the Commission’s Rules ) )  
\_\_\_\_\_)

**To: Office of the Managing Director**

**PETITION FOR WAIVER OF APPLICATION FEES FOR  
*PRO FORMA* ASSIGNMENT**

EchoStar Corporation (“EchoStar”) respectfully requests that, pursuant to Sections 1.3 and 1.1117 of the Commission’s Rules,<sup>1</sup> and the Communications Act of 1934, as amended (the “Act”),<sup>2</sup> the Commission waive to the extent necessary certain application fees associated with its concurrently filed application seeking consent to the *pro forma* assignment of its authority to operate 1,000,000 receive-only earth stations with EchoStar 4 and EchoStar 8, both Mexico-licensed satellites operating at 77° W.L. (Call Sign E050196), to its wholly-owned subsidiary EchoStar 77 Corporation (“EchoStar 77”).<sup>3</sup>

The Commission has repeatedly granted indistinguishable requests for waiver made by EchoStar in the past. The Commission’s Rules and the Act specifically provide that such fees

<sup>1</sup> 47 C.F.R. §§ 1.3 and 1.1117.

<sup>2</sup> 47 U.S.C. § 158(d)(2).

<sup>3</sup> See *EchoStar Pro Forma Assignment Application*, File No. SES-ASG-\_\_\_\_\_-\_\_\_\_ (filed Feb. 24, 2011) (“Application”). For the Commission’s convenience, enclosed is a copy of the Application materials to which this request for waiver is associated.

may be waived where good cause is shown and the public interest would be served.<sup>4</sup> As demonstrated below, good cause exists for, and the public interest would be served by, waiver of fees in this case because the application fee would not be commensurate with the Commission's actual costs of processing EchoStar's Application and would represent a regulatory barrier to EchoStar's proposed assignment. If the Commission determines that a fee is required, EchoStar requests, as in prior instances, that the Commission find that the "VSAT" application fee of \$2,495 is appropriate. To avoid any delays in processing, EchoStar has already paid the \$2,495 fee, to which the instant request to provide service to up to a million receive-only dishes is similar.

## **I. BACKGROUND**

EchoStar is requesting consent to assign an authorization to operate 1,000,000 receive-only earth station antennas to its subsidiary EchoStar 77, a necessary step in order for EchoStar's subsidiaries to obtain debt financing that will ultimately improve the provision of satellite services to EchoStar's wholesale customers, who in turn provide retail direct-to-home satellite television service to millions of U.S. customers. The Commission's Rules do not designate any specific charges for this type of application being filed in the DBS service. The schedule of Commission fees includes the following charges for similar applications:

- Assignment Application for a Fixed Satellite Very Small Aperture Terminal (VSAT) System = \$2,495.00<sup>5</sup>
- Assignment of Receive-Only Earth Stations = \$500.00 for the first station and \$170.00 for each additional station.<sup>6</sup>

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<sup>4</sup> 47 C.F.R. § 1.1117; 47 U.S.C. § 158(d)(2).

<sup>5</sup> 47 C.F.R. § 1.1107(6)(c).

Even setting aside the *pro forma* nature of the instant application, EchoStar's network of DBS earth stations is most like a VSAT system; it should therefore be subject to at most the \$2,495.00 application fee for an assignment application for a VSAT system. The Commission has granted a similar waiver for EchoStar's initial application based on its similarity to a VSAT system.<sup>7</sup>

EchoStar's system architecture consists of as many as 1,000,000 technically identical earth stations operating in the DBS portion of the Ku-band. This architecture is consistent with the FCC's definition of VSAT networks as networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands.<sup>8</sup> Because EchoStar believes, and the Commission has agreed, that its system is most like a VSAT network, it has paid the \$2,495.00 application fee to avoid processing delays. However, if the Commission determines that the fee for receive-only earth stations applies to each of EchoStar's 1,000,000 consumer units, EchoStar seeks a waiver of that \$170,000,330.00 application fee.

## **II. GOOD CAUSE EXISTS FOR, AND THE PUBLIC INTEREST WOULD BE SERVED BY, WAIVER OF THE RECEIVE-ONLY EARTH STATION APPLICATION FEE**

The Commission has the authority to waive application fees where -- such as here -- good cause is shown and the public interest would be served.<sup>9</sup> As demonstrated below, a fee of over

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<sup>6</sup> *Id.* § 1.1107(5)(c).

<sup>7</sup> See Letter from Mark Stephens, Chief Financial Officer, FCC, to Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C. (May 9, 2007).

<sup>8</sup> See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, *Order*, 11 FCC Rcd. 21581, 21592 (1996).

<sup>9</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

\$170 million would be prohibitively high for EchoStar to effect its *pro forma* assignment and would not be commensurate with Commission processing resources.

**A. FCC Application Fees are Intended to Recover the Costs of Standard Application Processing**

The Commission's schedule of application fees is intended to reimburse the government for the work involved in providing certain regulatory services associated with processing applications. In setting the fees, the Commission has noted that "the charges represent a rough approximation of the Commission's actual cost of providing the regulatory actions listed" and that "the very core of this effort is to reimburse the government -- and the general public -- for the regulatory services provided to certain members of the public."<sup>10</sup> However, in certain instances, the Commission's schedule of filing fees may not reasonably approximate the costs involved in handling a particular application or may not otherwise serve the public interest. For this reason, the Commission's Rules and the Act allow for parties to seek a waiver of the application fees.<sup>11</sup>

A filing fee waiver is warranted here because many of the processing activities required to review the requested *pro forma* assignment -- the costs of which the application fees are designed to recover -- are simply not required in reviewing EchoStar's Application. For example, the Commission need not review 1,000,000 different stations to grant EchoStar's Application. Rather, as in the case of a VSAT network, the Commission only needs to review

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<sup>10</sup> Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, *Report and Order*, 2 FCC Rcd. 947, 948 (1987).

<sup>11</sup> *See supra* note 4.

one set of technical parameters for all of the technically identical earth stations – or would need to if this were not a *pro forma* request.

In similar contexts, the Commission has accepted application fees for VSAT networks.<sup>12</sup> Thus, the \$2,495.00 application fee paid for this Application is consistent with past practice and would fairly compensate the Commission for the costs involved in its review.

**B. The Public Interest Would Be Served by Granting the Requested Fee Waiver**

In addition to being supported by the requisite good cause, granting EchoStar's request for a waiver of application fees for its Application is also consistent with the public interest. The assignment will serve the public interest because it will allow EchoStar's subsidiaries to obtain necessary financing for future growth, acquisition of additional satellites, and expansion of their service offerings. The reorganization will also streamline the distribution of wholesale satellite services offered by EchoStar's subsidiaries, ultimately improving the service provided to end users through EchoStar's wholesale customers. Additionally, the financing that is supported by this proposed assignment will allow EchoStar's subsidiaries to enter into new markets and attract new customers, thereby increasing competition in the multichannel video programming distribution market.

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<sup>12</sup> See, e.g., *Application of EchoStar Satellite LLC*, SES-ASG-20070228-00278 (granted Apr. 3, 2007) (approving application in which applicant paid VSAT application fee for 1,000,000 receive-only terminals to be used for DBS service from a Canadian satellite); see also *In the Matter of Digital Broadband Application Corp.*, Order, 18 FCC Rcd. 9455 (2003) (approving application in which applicant paid VSAT and fixed satellite transmit/receive earth station application fees for one hub earth station to be used with one million two-way FSS and DBS service from Canadian satellites).

