

may be waived where good cause is shown and the public interest would be served.⁴ 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 five million receive-only dishes is similar.

I. BACKGROUND

EchoStar is requesting consent to assign an authorization to operate 5,000,000 receive-only earth station antennas to its subsidiary EBC, in order to align EchoStar's assets with its existing satellite operations, which 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 = \$2,495.00⁵
- Assignment of Receive-Only Earth Stations = \$500.00 for the first station and \$170.00 for each additional station.⁶

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

⁵ 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. EchoStar's system architecture consists of as many as 5,000,000 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.⁷ 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 5,000,000 consumer units, EchoStar seeks a waiver of that \$850,000,330.00 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.⁸ As demonstrated below, a fee of over \$850 million would be prohibitively high for EchoStar to effect its *pro forma* assignment and would not be commensurate with Commission processing resources.

⁶ *Id.* § 1.1107(5)(c).

⁷ See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, *Order*, 11 FCC Rcd. 21581, 21592 (1996).

⁸ 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).

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."⁹ 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.¹⁰

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 5,000,000 different stations to grant EchoStar's Application. Rather, as in the case of a VSAT network, the Commission only needs to review 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.

⁹ 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).

¹⁰ *See supra* note 4.

In similar contexts, the Commission has accepted application fees for VSAT networks.¹¹ 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 the realignment of EchoStar's assets to reflect its business operations will reduce operational inefficiencies, which will in turn improve EchoStar's ability to service its wholesale customers.

EchoStar should not be required to pay a separate fee for each of its 5,000,000 earth stations merely because it is providing service from a non-U.S. satellite when an operator providing an identical service using a U.S.-licensed satellite would not need to apply for licenses for each of its consumer dishes.¹² The result would be overtly discriminatory treatment among domestic- and foreign-licensed DBS and Direct-to-Home ("DTH") providers serving the United States. Such a result would also not be consistent with the Commission's decision to eliminate

¹¹ 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).

¹² Except for the fact that EchoStar will be using a Canadian orbital location, EchoStar would not have to file an application for these earth stations. See 47 C.F.R. § 25.131(j); see also *In the Matter of Telesat Canada Petition for Declaratory Ruling for Inclusion of ANIK F1 on the Permitted Space Station List*, Order, 16 FCC Rcd 16365, 16369 (2001) (holding that "receive-only earth stations receiving transmissions from any non-U.S. licensed satellite, regardless of whether the satellites is on the Permitted List, must be licensed.").

the requirement to obtain a license – or to pay a separate fee – for U.S. receive-only earth stations to communicate with foreign-licensed Fixed Satellite Service satellites on the Permitted Space Station List.¹³

III. CONCLUSION

The imposition of a \$850 million fee on requests of this kind was not what Congress or the Commission intended when the fee guidelines were adopted. Such an astronomical fee for a *pro forma* assignment application would be a barrier to any operator that desires to improve its internal operation and organization as proposed by EchoStar. Filing fees should reimburse the government for the costs of processing applications, not act as a regulatory barrier to business.

For all of the aforementioned reasons, EchoStar respectfully requests that the Commission grant the requested fee waiver to the extent necessary in conjunction with its Application to effect a *pro forma* assignment of EchoStar Corporation’s authorization to provide DBS service to the United States from Nimiq 5 from the 72.7° W.L. orbital location.

Respectfully submitted,

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¹³ See *Amendment of the Commission’s Space Station Licensing Rules and Policies*, Second Report and Order in IB Docket No. 02-34, Second Report and Order in IB Docket No. 00-248, and Declaratory Order in IB Docket No. 96-111, 18 FCC Rcd 12507, 12516-17 (2003).