

Federal Communications Commission
Washington, D.C. 20554

EchoStar Satellite L.L.C.)	
)	
Application for Special Temporary Authority to Conduct Telemetry, Tracking and Command Operations during the Relocation of EchoStar 4 to the 77° W.L. Orbital Location)	File No. SAT-STA-20050321-00068
)	
)	
Application for Modification of Direct Broadcast Satellite Authorization To Permit Long-Term Cessation of Operations at the 157° W.L. Orbital Location)	File No. SAT-MOD-20050513-00103 Call Sign: S2621
)	
)	
Application for Modification of Earth Station Authorization to add the Echostar 4 Satellite at 77° W.L. as a Point of Communication)	File No. SES-MFS-20050527-00662 Call Sign: E020306
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 2, 2005

Released: June 3, 2005

By the Chief, International Bureau:

I. INTRODUCTION

1. By this Order, we deny a request for special temporary authority filed by EchoStar Satellite, L.L.C. (“EchoStar”).¹ EchoStar seeks authority to conduct tracking, telemetry and command operations during the relocation of EchoStar 4 from the 157° W.L. orbital location, at which it is authorized by the Federal Communications Commission to provide service on three DBS channels, to the 77° W.L. orbital location. At the new orbital location, any operations of the satellite would be pursuant to an authorization granted by Mexico. Based on the information provided by EchoStar in the record, the sole immediate purpose of the relocation is to bring into use an ITU filing by the Mexican Administration. Consistent with precedent, we conclude that the bringing into use of an ITU filing, by itself, does not constitute a public interest reason sufficient to justify grant of an authorization. Accordingly we deny EchoStar’s request, and dismiss a related request by EchoStar which seeks to modify its authorization for three channels at the 157° W.L. orbital location in order to permit long-term cessation of operations at that location.² We also dismiss a request to modify an earth station authorization to add Echostar 4 at 77° W.L. as a point of communication.

¹ File No. SAT-STA-20050321-00068 (“EchoStar STA Request”).

² File No. SAT-MOD-20050513-00103.

II. BACKGROUND

2. *Procedural History.* EchoStar filed its STA Request on March 21, 2005. On April 13, 2005, the Chief of the Satellite Division requested additional information concerning the proposed transaction, the technical status of the EchoStar 4 satellite, and other matters.³ On April 22, 2005, the EchoStar STA Request was placed on public notice.⁴ On April 26, 2005, EchoStar provided a partial response to the April 15 Information Request. On May 4, 2005, DIRECTV Enterprises LLC (“DIRECTV”) filed a letter in which it noted that it currently offers “local-into-local”⁵ signals to 25 markets in the United States using the Canadian-licensed DIRECTV 5 satellite operating at the 72.5° W.L. orbital location. DIRECTV requested, in light of the fact that EchoStar 4 would operate within 4.5° of the DIRECTV 5, that EchoStar make available technical information concerning the planned operations of the EchoStar 4 satellite at the 77° W.L. orbital location. On May 10, EchoStar provided technical information concerning EIRP contours for operations of EchoStar 4 at the 77° W.L. orbital location. On May 13, EchoStar provided information in response to the April 13 Information Request. On May 13, EchoStar also filed a request to modify its authorization for the 157° W.L. orbital location, so that, despite the removal of the EchoStar 4 satellite from that location, the license would not automatically lapse.⁶ On May 23, 2005, the comment period closed on the EchoStar STA Request. No comments, other than DIRECTV’s May 4 letter, were filed. On May 24, 2005, EchoStar filed a letter requesting expedited consideration. On May 27, 2005, EchoStar filed a request to modify an earth station authorization to list the EchoStar 4 satellite at 77° W.L. as an authorized point of communication.

3. *The Transaction.* The proposed relocation of EchoStar 4 is pursuant to two agreements between EchoStar and SES Global Latin America S.A. (“SES”), a Societe Anonyme organized under the laws of Luxembourg. The first agreement, dated November 17, 2004 (the “Framework Agreement”), and submitted with EchoStar’s STA Request, provides a framework for the pursuit and maintenance, by SES, of a Mexican concession to operate a satellite at the 77° W.L. orbital location, and the use, initially and on an interim basis, of the EchoStar 4 satellite at that location. This framework agreement also provides for additional agreements, including an agreement for a new satellite to be located at the 77° W.L. orbital location. The framework agreement also provides for additional definitive agreements concerning the operations of EchoStar 4 at the 77° W.L. orbital location. On February 2, 2005, SES’s affiliate, QuetzSat, S.de R.L.de C.V., a Mexican entity, obtained a concession from the Mexican Secretariat of Communications and Transportation (the “Concession”) to operate a satellite at the 77° W.L. orbital location. EchoStar and SES subsequently entered into a Satellite Relocation and Use Agreement for the 77° W.L. orbital location (“Definitive Agreement”), effective May 13, 2005,⁷ that provides for use of

³ Letter from Thomas S. Tycz, Chief, Satellite Division, to Pantelis Michalopoulos, Counsel for EchoStar (April 13, 2005) (“April 13 Information Request”).

⁴ Report No. SAT-00286.

⁵ The term “local-into-local,” as used in this Order, refers to provision via satellite retransmission of local broadcast channels to subscribers who reside in a local TV station’s market. See 17 U.S.C. § 122(j)(2)(A).

⁶ File No. SAT-MOD-20050513-00103. See also 47 C.F.R. § 25.161(c).

⁷ Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Marlene H. Dortch, Secretary, FCC, dated May 13, 2005.

EchoStar 4 at the 77° W.L. orbital location.

4. Under the International Telecommunication Union's Plans for Broadcast Satellite Services, and Associated Feeder Links,⁸ Mexico is assigned frequencies for use by the broadcast satellite service at the 78° W.L. orbital location. On or about April 22, 1996, Mexico filed a request for modification of that assignment, using the network names MEX-TDH1A and MEX-TDH1B, to, among other things, change the orbital location to 77° W.L. The date by which the modification must be brought into use is July 10, 2005.⁹

5. The EchoStar 4 satellite is a Lockheed Martin model A2100 spacecraft launched on May 7, 1998 (GMT). One of two solar arrays on the satellite failed to deploy, which resulted in a decrease in available power, and a higher than normal accumulation of spacecraft momentum. Consequently, the spacecraft required increased fuel usage for momentum unloading. The solar array fully deployed in September of 2004, returning fuel use to nominal levels. The spacecraft has also experienced failures or significant performance issues in three low thrust thrusters, as well as in both the primary and backup valve heater circuits servicing all of its arc-jet thrusters. As a result, there are some limitations on the spacecraft's ability to conduct north-south station-keeping maneuvers, since such maneuvers must be planned to coincide with ideal thermal conditions. In addition, 38 of 44 traveling wave tube amplifiers (TWTAs), which are used to amplify radio-frequency signals, have failed.¹⁰ Because of "operational limitations and equipment failures" on the satellite, EchoStar does not rely on the satellite to provide service to its subscribers, but instead duplicates the service provided on EchoStar 4 on a satellite located at the 148° W.L. orbital location.¹¹

III. DISCUSSION

6. In order to grant a request for authority, the Commission must find that such a grant would serve the public interest.¹² Based on a review of the record, we conclude that EchoStar has not stated a sufficient public interest reason for grant of its request. The stated purpose for locating the EchoStar 4 satellite at the 77° W.L. orbital location at this time is to provide a basis for claiming that an ITU deadline for bringing into use certain ITU filings has been met. In particular, we note that QuetzSat's Concession clearly indicates that, in order to provide Direct-to-Home Service, i.e. an actual service to consumers, that service must be provided either through an existing concessionaire for such a

⁸ International Telecommunication Union Radio Regulations, Appendices 30 and 30A.

⁹ On November 4, 2003, the Administration of Mexico filed a new modification request with the ITU, using the network names MEX-TVD1 and MEX-TVD2, that is identical to the original request as published by the ITU in December 1999.

¹⁰ See Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Thomas S. Tycz, Chief, Satellite Division, dated May 13, 2005, at Attachment 3.

¹¹ See File No. SAT-MOD-20050513-00103, at 5.

¹² 47 U.S.C. § 309; 47 C.F.R. § 25.120.

service, or through the issuance of a new concession.¹³ Both the Framework Agreement and the Definitive Agreement acknowledge this requirement,¹⁴ and EchoStar has also expressly indicated that such a concession would be required.¹⁵ EchoStar subsequently indicated its view, however, that an additional concession is not needed for purposes of bringing into use the 77° W.L. orbital location.¹⁶ It appears, therefore, that bringing into use would not be claimed based on the actual provision of direct-to-home service.

7. This case, therefore, is unlike other cases in which the Commission has granted authority to move an FCC licensed satellite to a non-U.S. DBS location in order to address capacity needs and concerns with continuity of service. For example, in the *DIRECTV 3* case,¹⁷ the satellite moved to a Canadian location, and commenced operations pursuant to a Canadian license, in order to address a pressing capacity need resulting from technical anomalies in Canadian satellites. The satellite provided for immediate improvement in the quality and reliability of an existing service provided to direct-to-home subscribers in Canada.¹⁸ In granting that request, we noted that helping “to assure continuity of service” served the public interest by comporting “with cooperation between U.S. and Canadian satellite providers in times of emergency or capacity need.”¹⁹ In this case, there are no considerations concerning capacity needs for continuity of existing service.

8. This case is also unlike other cases in which a U.S. satellite was used to bring into use a non-U.S. location. For example, in the *DIRECTV 5*²⁰ case, the satellite moved to a location assigned to Canada under the ITU BSS Plan. However, there was an immediate public interest benefit because the satellite was used to provide local-into-local service to U.S. DBS subscribers in 25 markets. The fact that the satellite move also allowed the location to be “brought into use” for ITU purposes was an incidental benefit. Here, while EchoStar indicates that service may be provided to the United States from the 77° W.L. orbital location in the future, it does not have a currently pending request to provide such service, and it may well be that such service would be provided only if a new satellite is launched into the 77° W.L. orbital location. Under these circumstances, the potential benefits from such service, at best, are

¹³ Concession at 1.3.

¹⁴ Framework Agreement at Article 1(f); Definitive Agreement at 1.B(1).

¹⁵ Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Thomas S. Tycz, Chief, Satellite Division, dated May 13, 2005, at Attachment 2.

¹⁶ Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Thomas S. Tycz, Chief, Satellite Division, dated May 24, 2005.

¹⁷ *DIRECTV, Inc., Order and Authorization*, 19 FCC Rcd 11055 (2004). See also File No. SAT-STA-20030324-0039 (Galaxy IIR satellite used to provide interim capacity, pending launch of a replacement satellite, pursuant to a Canadian license).

¹⁸ *Id.* at ¶¶ 3-4, 10.

¹⁹ *Id.* at ¶10.

²⁰ *DIRECTV, Inc., Order and Authorization*, 19 FCC Rcd 15529 (Int’l Bur. 2004).

purely speculative.

9. Further, in a number of recent decisions, we have consistently declined to premise favorable public interest determinations on the fact that issuance of an authorization might facilitate meeting an ITU bringing into use deadline. For example, in one case we expressly declined to grant an extension of a licensee's milestone condition where the licensee argued that the extension would facilitate bringing into use a U.S. filing at the ITU. We noted that U.S. public would not necessarily lose service if the filing was not brought into use, since the Commission's policies are favorable to market entry by systems ready, willing, and able to provide service, regardless of the national origin of the system.²¹ As indicated in another recent decision, we treat considerations related to ITU bringing into use as irrelevant to our public interest determinations.²² We see no reason to treat requests from U.S. entities seeking to bring into use ITU filings from other Administrations any differently.

IV. CONCLUSION

10. Because there is no concrete basis presented in the record for making a favorable public interest determination, we will deny the EchoStar STA Request, and dismiss EchoStar's related requests i.) to cease operations, for an unspecified period longer than 90 days, at the 157° W.L. orbital location,²³ and ii.) to modify an earth station authorization to specify Echostar 4 at the 77° W. L. as an authorized point of communication.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that EchoStar Satellite L.L.C.'s application, SAT-STA-20050321-00068 (Call Sign S2621), IS DENIED.

12. IT IS FURTHER ORDERED that EchoStar Satellite L.L.C.'s application, SAT-MOD-20050513-00103, IS DISMISSED.

13. IT IS FURTHER ORDERED that EchoStar Satellite L.L.C.'s application, File No. SES-MFS-20050527-00662 (Call Sign E020306), IS DISMISSED.

14. This *Order and Authorization* is issued pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson

²¹ VisionStar Incorporated, *Memorandum Opinion and Order*, 19 FCC Rcd 14820, ¶ 11 (Int'l Bur. 2004).

²² SES Americom, Inc., *Memorandum Opinion and Order*, 20 FCC Rcd 436, n. 39 (Int'l Bur. 2005).

²³ File No. SAT-MOD-20050513-00103, at n. 8 (indicating that, if the EchoStar STA Request is denied, the modification application becomes moot and can be dismissed).

Chief, International Bureau