

good cause is shown and the public interest would be served.⁵ As demonstrated below, good cause exists for, and the public interest would be served by, waiver of fees in this case because the modification application fee that may otherwise be payable 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 provision of service. If the Commission determines that a fee is required, EchoStar requests that the Commission find that the "VSAT" modification application fee is appropriate. EchoStar has already paid the \$175 fee for such applications, to which the instant request to modify EchoStar's existing license is similar.

I. BACKGROUND

EchoStar is requesting a modification of its authorization for 1,000,000 receive-only earth station antennas in order to supplement its provision of multichannel video services to consumers in the United States from the 77° W.L. orbital location. The Commission's rules do not designate any specific charges for the type of application being filed in the DBS service. The following schedule of charges for applications for the types of services which could be applied to EchoStar's Application include the following:

- Modification of License Application for a Fixed Satellite Very Small Aperture Terminal (VSAT) System = \$175.00 per system⁶
- Modification of License for Receive-Only Earth Stations = \$175.00 per station⁷

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

⁶ See *International and Satellite Services Fee Filing Guide*, at 13 (effective Apr. 29, 2009) ("*Fee Filing Guide*").

⁷ *Id.* at 12.

EchoStar's proposed network of DBS earth stations is most like a VSAT system; therefore, it should be subject to at most the \$175.00 application fee for the modification application for a VSAT system.

EchoStar's proposed 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, which are networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands.⁸ Because EchoStar believes that its system is most like a VSAT network, it has paid the \$175.00 application fee. However, if the Commission determines that the \$175.00 per-station fee for receive-only earth stations applies to each of EchoStar's 1,000,000 consumer units, EchoStar seeks a waiver of that \$175 million 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.⁹ As demonstrated below, a fee of up to \$175 million would be prohibitively high for EchoStar, would deny competitive service offerings to the public, and would not be commensurate with FCC processing resources.

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

⁹ 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."¹⁰ 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 parties to seek a waiver of the application fees.¹¹

A filing fee waiver is warranted here because many of the processing activities required to modify individual earth station licenses -- the costs of which the receive-only earth station application fees are designed to recover -- are simply not required in reviewing EchoStar's Application to modify its blanket earth station license to add EchoStar 6 as an additional point of communication. The Commission has previously accepted the VSAT application fees for similar networks and applications.¹² Indeed, when EchoStar originally applied for the blanket earth

¹⁰ 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).

¹¹ *See supra* note 4.

¹² *See, e.g.*, Application of EchoStar Satellite Operating Corporation for Pro Forma Assignment of Blanket Earth Station License, File No. SES-ASG-20071108-01575, (granted Nov. 19, 2007) (fee waiver granted in a letter from Mark Stephens, CFO, FCC, to Pantelis Michalopoulos and Petra A. Vorwig, Counsel for EchoStar, dated Apr. 4, 2008); Application of DIRECTV Enterprises, LLC, DA 04-2526 (rel. Aug. 13, 2004) (approving application in which

station license, for which a modification is now being filed, the Commission ruled that the VSAT initial application fee was payable.¹³ Consistent with that ruling, the VSAT modification fee of \$175 per system should apply to the instant modification request as well.

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. As described in detail in the Application, grant of the authority requested by EchoStar to provide DBS services in the United States using the EchoStar 6 satellite at 76.95° W.L. will further a number of compelling public interest objectives.

EchoStar should not be required to pay a \$175.00 fee for each of its 1,000,000 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.¹⁴ The result would be overtly discriminatory treatment among DBS and Direct-to-Home ("DTH") providers serving the United States. Moreover, in its *Space Station Licensing Order*, the Commission concluded that there is no need for a satellite operator to seek separate authorization for routinely-licensed receive-only earth station antennas -- or to

applicant paid VSAT application fee for 1,000,000 receive-only terminals to be used for DBS service from a Canadian satellite).

¹³ See Letter from Mark A. Reger, CFO, FCC to Pantelis Michalopoulos, Counsel for EchoStar (May 9, 2007).

¹⁴ Except for the fact that EchoStar will be using a Mexican 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").

pay a separate fee -- if the Commission has concluded that the public interest is served by that provider's satellite being added to the Permitted Space Station List, including providers authorized to provide DTH services.¹⁵

III. CONCLUSION

Under current Commission fee guidelines, EchoStar could potentially be required to pay a fee of \$175.00 to modify each of its 1,000,000 receive-only earth stations. That would amount to a total fee of up to \$175 million. Clearly, the imposition of such a high fee was not what Congress or the Commission intended when the fee guidelines were adopted. Such an astronomical application fee would be a barrier to any operator that desires to offer an innovative, competitive service to the public, as proposed by EchoStar.

The financial hardship that a \$175 million filing fee would impose on EchoStar, or indeed any other entity, would clearly preclude an application from being filed at all. Filing fees should reimburse the government for the costs of processing applications, not act as a regulatory barrier to entry for competitive services. 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 provide DBS service from EchoStar 6 at the 76.95° W.L. orbital location.

¹⁵ 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).

Respectfully submitted,

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