

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

In the Matter of)	
)	
DISH Operating L.L.C.)	
)	Call Sign E090020
Petition for Waiver of Application Fees Pursuant)	
to Section 1.1117 of the Commission's Rules)	File No. SES-MFS-2011_____
)	
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To: Office of the Managing Director

PETITION FOR WAIVER OF APPLICATION FEES

DISH Operating L.L.C. (“DISH”) respectfully requests that, pursuant to Sections 1.3 and 1.1117 of the Commission’s Rules¹ and the Communications Act of 1934, as amended (the “Act”),² the Commission waive to the extent necessary certain application fees associated with its concurrently filed application to modify its existing blanket earth station license to operate 1,000,000 receive-only earth stations to receive Direct Broadcast Satellite (“DBS”) programming from the QuetzSat-1 satellite operating as a Mexican satellite at the nominal 77° W.L. orbital location (“Application”).³ The Commission’s Rules and the Act specifically provide that such fees 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

¹ 47 C.F.R. §§ 1.3, 1.1117.

² 47 U.S.C. § 158(d)(2).

³ See File No. SES-MFS-2011_____ (filed July 7, 2011) (“Application”). For convenience, this petition is being attached as an Attachment to this application.

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

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 DISH's Application and would represent a regulatory barrier to DISH's proposed provision of service. If the Commission determines that a fee is required, DISH requests that the Commission find that the "VSAT" modification application fee is appropriate. DISH has already paid the VSAT modification fee for modification applications like this one in the past.

I. BACKGROUND

DISH 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 nominal 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 DISH's Application, include the following:

- Modification of License Application for a Fixed Satellite Very Small Aperture Terminal (VSAT) System = \$180.00 per system⁵
- Modification of License for Receive-Only Earth Stations = \$180.00 per station⁶

⁵ See Amendment of the Schedule of Application Fees Set, 76 Fed. Reg. 29,158, 29,167 (May 20, 2011) (effective June 20, 2011); *see also* Amendment of the Schedule of Application Fees Set Forth in Section 1.1102 through 1.1109 of the Commission's Rules, *Order and Notice of Proposed Rulemaking*, 26 FCC Rcd. 2511, 2515 (2011).

⁶ See 26 FCC Rcd. at 2515.

DISH's network of DBS earth stations is most like a VSAT system; therefore, it should be subject to at most the \$180.00 application fee for the modification application for a VSAT system.

DISH'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, 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.⁷ Because DISH believes that its system is most like a VSAT network, it has paid the \$180.00 application fee. However, if the Commission determines that the \$180.00 per-station fee for receive-only earth stations applies to each of DISH's 1,000,000 consumer units, DISH seeks a waiver of that \$180 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.⁸ As demonstrated below, a fee of up to \$180 million would be prohibitively high for DISH, would deny competitive service offerings to the public, and would not be commensurate with FCC processing resources.

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).

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 parties to seek a waiver of the application fees.

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 DISH's Application to modify its blanket earth station license to add QuetzSat-1 as an additional point of communication. The Commission has previously accepted the VSAT application fees for similar networks and applications.¹⁰ Indeed, when DISH originally applied for the blanket earth station license, for which a modification is now being filed, the Commission ruled that the VSAT initial

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

application fee was payable.¹¹ Consistent with that ruling, the VSAT modification fee of \$180 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 DISH'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 DISH to provide DBS services in the United States using the QuetzSat-1 satellite at the nominal 77° W.L. orbital location will further a number of compelling public interest objectives.

DISH should not be required to pay a \$180.00 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.¹² 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 pay a separate fee – if the Commission has concluded that the public interest is served by that

¹¹ See Letter from Mark A. Reger, CFO, FCC to Pantelis Michalopoulos, Counsel for EchoStar Corporation (May 9, 2007).

¹² Except for the fact that DISH will be using a Mexican orbital location, DISH 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").

provider's satellite being added to the Permitted Space Station List, including providers authorized to provide DTH services.¹³

III. CONCLUSION

Under current Commission fee guidelines, DISH could potentially be required to pay a fee of \$180.00 to modify each of its 1,000,000 receive-only earth stations. That would amount to a total fee of up to \$180 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 DISH.

The financial hardship that a \$180 million filing fee would impose on DISH, 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, DISH respectfully requests that the Commission grant the requested fee waiver to the extent necessary in conjunction with its Application to provide DBS service from QuetzSat-1 at the nominal 77° W.L. orbital location.

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).

Respectfully submitted,

/s/

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