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November 22, 2004

**Jack Richards**  
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## Via Hand Delivery

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

**RECEIVED**

NOV 22 2004

Federal Communications Commission  
Office of Secretary

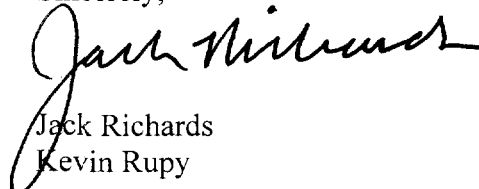
**Re: In The Matter Of EchoStar Satellite L.L.C. Request For Special Temporary Authority To Operate Its Ka-band Earth Station (FCC Call Sign E030038) With The AMC-15 satellite At The 117 W.L. And 113 W.L. Orbital Locations, SES-STA-20041019-01564**

Dear Ms. Dortch:

Since the above-referenced proceeding requests Special Temporary Authority (STA) for EchoStar Satellite LLC ("EchoStar") to communicate from Earth Stations with the AMC 15 satellite at the 117° WL and 113° WL orbital positions, enclosed for incorporation into the record of this proceeding are an original and four copies of a Petition to Deny filed by our client, the National Rural Telecommunications Cooperative (NRTC), in response to a request for STA by SES AMERICOM, Inc. to operate the AMC 15 satellite at those locations (File No. SAT-STA-20041012-00198).

Should you have any questions or require any additional information, please feel free to contact the undersigned.

Sincerely,



Jack Richards  
Kevin Rupy

Attachments

## CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 22<sup>nd</sup> day of November, 2004, a true and correct copy of the foregoing correspondence of the National Rural Telecommunications Cooperative in the matter of the Application of EchoStar Satellite, LLC, for Special Temporary Authority to Operate its Ka-band Earth Station (FCC Call Sign E030038) With the AMC-15 Satellite at the 117° W.L. and 113° W.L. Orbital Locations, SES-STA-20041019-01564, was submitted via hand delivery to the Federal Communications Commission, and served via electronic mail and First Class Mail upon the following:

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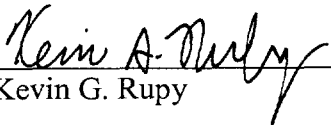
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*Counsel for EchoStar Satellite, LLC*

  
\_\_\_\_\_  
Kevin G. Rupy

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

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Federal Communications Commission  
Office of Secretary

File No. SAT-STA-20041012-00198

\_\_\_\_\_  
*Application of* )  
)  
)

**SES AMERICOM, INC.** )  
)  
)

For Special Temporary Authority to Operate )  
the AMC-15 Satellite at 113° W.L. and 117° W.L. )  
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**PETITION TO DENY**  
**BY THE**  
**NATIONAL RURAL**  
**TELECOMMUNICATIONS COOPERATIVE**

In response to a request by EchoStar Satellite LLC (“EchoStar”), SES Americom, Inc. (“SES”) seeks special temporary authority (“STA”) for short-term operations of AMC-15 at the 117° W.L and 113° W.L. orbital locations while the satellite travels to its final, licensed destination at 105° W.L. The satellite will remain at 117° W.L and 113° W.L. for 60 days at each location, before final positioning at 105° W.L.<sup>1</sup> Since the STA is nothing more than a vehicle for EchoStar to warehouse the 117° W.L and 113° W.L. slots, the National Rural Telecommunications Cooperative (NRTC) opposes it.<sup>2</sup>

<sup>1</sup> FCC File No. SAT-STA-20041012-00198, p. 2 (*SES Application*).

<sup>2</sup> NRTC is a not-for-profit cooperative comprised of 736 rural electric cooperatives, 147 rural telephone cooperatives and 203 independent rural telephone companies located throughout 48 States. Since its founding in 1986, NRTC’s mission has been to provide advanced technologies and telecommunications services to rural America. Last year, NRTC joined Liberty Satellite, LLC and Intelsat USA Sales Corporation in investing \$156 million (NRTC itself invested \$29 million) in WildBlue Communications, Inc. (WildBlue). WildBlue is expected to begin offering the first viable Ka-band satellite service in 2005, using technology designed to lower the cost of providing consumers throughout the country with high-speed Internet access via satellite. NRTC’s plans also include offering high speed Internet service bundled with video on a single satellite dish.

EchoStar is the second largest holder of Ka-band spectrum in the U.S.<sup>3</sup> Only recently did EchoStar become the licensee at 113° W.L., having obtained that authorization after VisionStar, a company controlled by EchoStar, lost it for failure to meet the Commission's construction requirements.<sup>4</sup> EchoStar does not hold the license for 117° W.L. but has applied to relocate its license from 123° W.L. to 117° W.L..<sup>5</sup> The International Telecommunications Union's ("ITU") "bring into use" ("BIU") dates for both orbital locations (117° W.L and 113° W.L.) are fast approaching, yet EchoStar has made no discernable effort to satisfy them.<sup>6</sup>

Through the STA, EchoStar apparently seeks to meet the ITU/BIU requirements and buy an extra two years during which it may or may not initiate regular operations at

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<sup>3</sup> A search of the Commission's International Bureau Filing System ("IBFS") website indicates that EchoStar is the second largest holder of Ka-band spectrum resources behind Rainbow DBS Company, LLC. EchoStar currently holds authorizations for the 123° WL, 121° WL, 113° WL and 97° WL orbital locations. See Advanced IBFS Search, < <http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr030b.hts?set=> > (visited November 18, 2004).

<sup>4</sup> Memorandum Opinion and Order, *VisionStar Incorporated, Application for Modification of Authority to Construct Launch and Operate a Ka-band Satellite System in the Fixed Satellite Service*, 19 FCC Rcd. 14820 (Int'l Bur. 2004) (*VisionStar Order*). In canceling VisionStar's license, the Commission left unresolved VisionStar's character qualifications, specifically VisionStar's failure to notify the Commission of material changes to its license until the eve of its construction completion deadline. The Commission determined that VisionStar's stated excuse for needing an extension did not "comport with the reality of the situation." *VisionStar Order*, ¶19. Although finding that VisionStar's action "violate[d] the underlying purpose" of the authorization's condition, the Commission concluded that "[d]eclaring VisionStar's authorization null and void for failure to meet its construction completion milestone removes the necessity of taking any further action for VisionStar's failure to comply with the notification provisions on which its transfer of control was conditioned." *VisionStar Order*, ¶19. See also, FCC File No. SAT-LOA-20040803-00154 (*EchoStar Application*).

<sup>5</sup> FCC File No. SAT-MOD-20041008-00196.

<sup>6</sup> *SES Application*, p. 2. As defined the ITU's rules, "[t]he date of bringing into use denotes the date at which the frequency assignment is brought into regular operation to provide the published radiocommunication service with the technical parameters within the technical characteristics notified to the Bureau." ITU Radio Regs., App. 4, Annex 2A, at A.2. The BIU dates for the 113° W.L. and 117° W.L. locations are May and July 2005, respectively. The priority that the United States currently enjoys for Ka-band operations at these locations will expire if not brought into use by these dates. See, e.g., *VisionStar*, 19 FCC Rcd. at 14823 (discussing 113° W.L. BIU date); *Pegasus Development Corp.*, 16 FCC Rcd. 14378, 14385 n.51 (Int'l Bur. 2001) (discussing 117° W.L. BIU date); *GE American Communications, Inc.*, 16 FCC Rcd. 11038, 11042-43 (Int'l Bur. 2001).

either or both of these slots.<sup>7</sup> As a result of this orbital sleight of hand, SES's AMC 15 satellite would serve as a temporary placeholder presumably for the sole purpose of meeting ITU requirements and enabling EchoStar to preserve the spectrum while blocking other interested applicants.

SES raises only two public policy arguments in support of its STA: that grant would permit the use of AMC-15 "in response to customer requirements," and that it would promote the "efficient use of orbital resources."<sup>8</sup> With respect to the former, NRTC could find no Commission precedent whereby "customer requirements" standing alone satisfied the Commission's public interest mandate. Instead of serving the public interest, SES is simply doing its best to meet EchoStar's private need to comply with international regulatory requirements.

Rather than promoting the efficient use of orbital resources, the STA would accomplish the exact opposite. EchoStar is using SES's AMC 15 satellite as a vehicle to warehouse this spectrum. There is no evidence to indicate that EchoStar has undertaken any serious construction efforts of its own at either 117° W.L or 113° W.L..<sup>9</sup> It apparently seeks to use the SES satellite solely as a regulatory placeholder, to preserve

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<sup>7</sup> Once an orbital location has been brought into use, that use may be suspended for up to two years -- but if the slot remains vacant after that period, ITU date priority is lost. ITU Radio Regs. S11.49; ITU Radio Reg. Bd. Rules of Procedure S11.49(1.1). This provision ordinary comes into play in the event of an in-orbit satellite failure. By operating temporarily at the two slots licensed to EchoStar, however, SES will buy another two years for EchoStar to consider its options without losing international priority. Yet there is no reason -- based on EchoStar's lack of progress to date -- to conclude that EchoStar will actually construct and launch two Ka-band satellites into these orbital locations within the two-year time frame.

<sup>8</sup> *SES Application*, p. 1.

<sup>9</sup> During the *VisionStar* proceeding, NRTC determined that EchoStar had spent a paltry \$4.6 million on its VisionStar license for 113° W.L. through December 31, 2001. See Petition to Deny by the NRTC, *In The Matter of VisionStar Incorporated Application For Modification of Authority to Construct, Launch And Operate a Ka-band Satellite System in The Fixed Satellite Service*, SAT-MOD-20020430-00075. Despite numerous opportunities, EchoStar offered no rebuttal to suggest that its efforts went beyond what was previously identified by NRTC.

both slots for future use. Hoarding spectrum for the benefit of a single licensee hardly promotes the efficient use of scarce orbital resources.

The situation regarding the 113° W.L. license is particularly ironic: VisionStar (a company controlled by EchoStar) lost the license for that slot because it failed to comply with the Commission's construction requirements.<sup>10</sup> The *same day* that VisionStar lost the license, EchoStar filed a new application to get it back.<sup>11</sup> Now, EchoStar plans to skirt the construction requirements again by having SES's satellite visit 113° W.L. for 60 days on its way to another slot. EchoStar still has not provided any indication that it has made any significant progress in actually constructing, launching and operating a satellite at this location.

EchoStar's "license" for 117° W.L. is in no better shape. In fact, EchoStar does not even hold a license for that location. Rather, it seeks to relocate its license from 123° W.L. to 117° W.L..<sup>12</sup> Like 113° W.L., however, EchoStar apparently has made no progress in constructing, launching and operating a satellite at 123° W.L. -- or 117° W.L. -- and plans to satisfy its ITU BIU requirements at 117° W.L. through yet another SES "fly-by."

It is possible that different circumstances would warrant a different result. For example, when a licensee has made substantial progress in constructing a satellite for use at a particular orbital location only to be stymied by events beyond its control, the Commission should consider allowing temporary placement of another satellite at that

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<sup>10</sup> *VisionStar Order*, ¶1.

<sup>11</sup> FCC File No. SAT-LOA-20040803-00154; Public Notice, SAT-00250 Report No., DA No. 04-3268 (released October 15, 2004).

<sup>12</sup> FCC File No. SAT-MOD-20041008-00196.

location when necessary to satisfy the ITU/BIU requirements.<sup>13</sup> That situation, however, is a far cry from the facts presented here. EchoStar only recently acquired these Ka-band authorizations and has done virtually nothing to satisfy any construction requirements, except arrange for SES to fly its satellite by these slots on the way to its ultimate destination.

It is one thing for the Commission to grant temporary authorization to meet BIU requirements when an operator in good faith has made significant investments in its system over a prolonged period of time, only to be blocked by events beyond its control. It is quite another for the Commission to be used as a tool by a licensee seeking to circumvent ITU requirements through an obvious subterfuge.<sup>14</sup>

The Commission should not allow its STA processes to be manipulated as a means of spectrum speculation. SES's STA is nothing more an attempt by SES to facilitate EchoStar's efforts to warehouse orbital locations. It should be DENIED.

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<sup>13</sup> WildBlue presented such a case in its recent application for temporary authority to use the Ka-band payload on the Intelsat Americas 8 ("IA-8") satellite at the 109 W.L. location. FCC File No. SAT-STA-20040915-00179. That application -- which was not opposed -- was subsequently withdrawn. See Public Notice, DA 04-3579 (rel. Nov. 12, 2004). WildBlue has invested over \$350 million and years of effort into development of its Ka-band satellite system at 109.2° W.L. Unfortunately, due to circumstances beyond its control -- *i.e.*, the bankruptcy of its satellite contractor -- WildBlue may not be able to launch its own nearly-completed WildBlue-1 satellite before its June 2005 BIU date. In that case, there was every reason to believe that WildBlue would be in a position to begin regular operations at its licensed orbital location within months after its BIU date (and certainly far in advance of two years) even though its nearly-completed satellite had been tied up in the bankruptcy of its contractor. In other words, WildBlue's proposal -- unlike SES/EchoStar's -- involved the short-term preservation of a slot for a long-term licensee with a nearly completed satellite and a delay beyond its control.

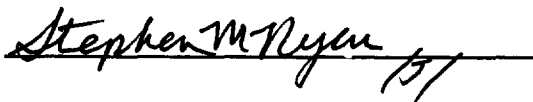
<sup>14</sup> EchoStar has a long history of questionable conduct before the Commission: the Commission described EchoStar's argument to delay carriage of public interest programming as "disingenuous," *Petition for Waiver of DBS Public Interest Implementation*, 15 FCC Rcd 1814, 1817 (1999); the Cable Bureau admonished EchoStar for its failure to timely disclose that information it was treating as confidential had been publicly disclosed, thus failing in its "duty of candor" to the agency, *EchoStar Satellite Corp. v. Young Broadcasting*, 16 FCC Rcd 15070 (Cable Bur. 2001); and the International Bureau justified imposing on EchoStar the maximum allowable fine for operating satellites from unauthorized orbital positions based on "the degree of misconduct, lack of voluntary disclosure and continuing violation." *EchoStar Satellite Corp.*, 13 FCC Rcd 16510 (Int'l Bur. 1998). As mentioned, the Commission also determined that VisionStar's excuse for needing an extension of the construction requirements did not "comport with the reality of the situation." *VisionStar Order*, ¶19. *Supra*, n.4.



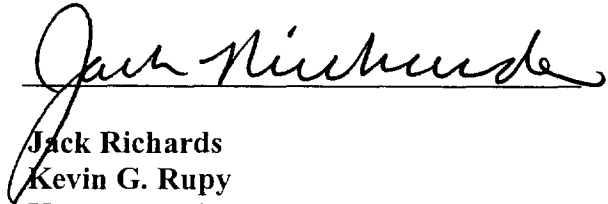
Respectfully Submitted,

**NATIONAL RURAL TELECOMMUNICATIONS  
COOPERATIVE**  
2121 Cooperative Way, Suite 500  
Herndon, VA 20171

**Its Attorneys:**



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**Dated: November 22, 2004**

**Attachment: Declaration of B. R. Phillips, III**

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

Application of	)	
	)	
SES AMERICOM, INC.	)	File No. SAT-STA-20041012-00198
	)	
For Special Temporary Authority to Operate	)	
the AMC-15 Satellite at 113' W.L. and 117' W.L.	)	

**DECLARATION OF B. R. PHILLIPS, III**

I, B. R. Phillips, III, declare under penalty of perjury under the laws of the United States of America that:

1. I am President and Chief Executive Officer of the National Rural Telecommunications Cooperative (NRTC).
2. I am familiar with the application of SES AMERICOM, INC., for Special Temporary Authority to Operate the AMC-15 Satellite at 113' W.L. and 117' W.L..
3. I have personal knowledge of the assertions of fact contained in the foregoing Petition to Deny of the National Rural Telecommunications Cooperative, and they are true and correct to the best of my knowledge, information and belief.

Executed on 11.22.2004



B. R. Phillips, III  
President and Chief Executive Officer  
NATIONAL RURAL  
TELECOMMUNICATIONS  
COOPERATIVE  
2121 Cooperative Way, Suite 500  
Herndon, VA 20171

## CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 22<sup>nd</sup> day of November, 2004, a true and correct copy of the foregoing Petition to Deny by the National Rural Telecommunications Cooperative in the matter of the Application of SES AMERICOM, Inc., for Special Temporary Authority to Operate the AMC-15 Satellite at 113° W.L. and 117° W.L., File No. SAT-STA-20041012-00198, was submitted via hand delivery to the Federal Communications Commission, and served via electronic mail and First Class Mail upon the following:

**Served via Electronic Mail:**

Donald Abelson  
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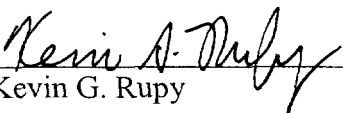
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