

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

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In the Matter of)

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DISH OPERATING L.L.C.) File No. SES-STA-2012____ - _____

) Call Sign E090020

Request for Special Temporary Authority to)

Communicate with QuetzSat-1 Using Channels)

23 and 24 at the 61.5° W.L. Orbital Location)

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REQUEST FOR SPECIAL TEMPORARY AUTHORITY

DISH Operating L.L.C. (“DISH”) requests special temporary authority (“STA”) to operate its earth blanket station (Call Sign E090020) with the QuetzSat-1 satellite on the Direct Broadcast Satellite (“DBS”) channels 23 and 24 at the 61.5° W.L. orbital location for 30 days. For the reasons set forth below, grant of this request will serve the public interest.

I. BACKGROUND AND PROCEDURAL HISTORY

As previously described to the Commission, DBS channels 23 and 24 at the nominal 61.5° W.L. orbital location have a unique history.¹ In stark contrast to the vast majority of DBS spectrum, these channels have remained unassigned and unlicensed. In fact, these channels “are the only two remaining unassigned DBS channels in the 12 GHz band that are assigned to the United States that can provide service to most of the contiguous United States.”²

¹ See File Nos. SAT-STA-20110909-00176 (granted Oct. 18, 2011); SAT-STA-20110525-00096 (granted May 27, 2011).

² Rainbow DBS Company, LLC and EchoStar Satellite L.L.C., *Memorandum Opinion and Order*, 20 FCC Rcd. 16868, 16880 ¶ 29 (2005) (“*Rainbow 1 Assignment Order*”).

The future of these unassigned channels is, however, also subject to the uncertainty surrounding the *Northpoint* decision that vacated the Commission's DBS auction rules, and the DBS freeze implemented by the Commission in response to that decision.³ As a result, a new licensee will not be in a position to provide services from these channels for a number of years. In fact, while the Commission initiated a proceeding in 2006 to establish the mechanism by which these channels could be ultimately licensed and operated, that proceeding is still pending.⁴

In an effort to ensure that such valuable spectrum does not lie fallow, the Commission has provided STA to DBS providers to operate on these channels for thirteen years subject to different conditions. On March 21, 1998, the Commission granted the predecessor-in-interest of DISH's sister corporation, EchoStar Corporation (along with its affiliates, "EchoStar"), STA to operate on channels 23 and 24, as well as 8 channels assigned to Dominion Video Satellite, Inc. and 11 channels assigned to Rainbow DBS Company, LLC ("Rainbow").⁵ Rainbow subsequently operated on channels 23 and 24 pursuant to STA for a two-year period⁶ before

³ *Northpoint Technology Ltd. v. FCC*, 412 F.3d 145 (D.C. Cir. 2005); Public Notice, Direct Broadcast Satellite (DBS) Service Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications, FCC 05-213 (rel. Dec. 21, 2005) (stating that the DBS freeze does not apply to "requests for special temporary authority").

⁴ See Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service in the United States, *Notice of Proposed Rulemaking*, 21 FCC Rcd. 9443 (2006).

⁵ See Direct Broadcasting Satellite Corporation, Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 1-21 (odd) and 23-32 (odd and even) at 61.5° W.L., *Memorandum Opinion and Order*, 13 FCC Rcd. 6392 (1998) ("*EchoStar 1998 STA Grant*"). For a full description of the regulatory history of these channels, see File No. SAT-STA-20090821-00092, Narrative at n.4 (granted Dec. 1, 2009).

⁶ Rainbow received STA (the "Rainbow STA") to operate on the unassigned channels in 2003. EchoStar Satellite Corporation and Rainbow DBS Company LLC, *Order and Authorization*, 18 FCC Rcd. 19825 (2003) ("*Rainbow STA Order*").

EchoStar's predecessor-in-interest acquired the Rainbow 1 satellite in 2005.⁷ On January 1, 2008, EchoStar's predecessor-in-interest assigned the STA to EchoStar as part of a *pro forma* corporate reorganization under which EchoStar Communications Corporation spun off its wholly-owned subsidiary, EchoStar.⁸ The Commission has highlighted repeatedly "the importance of ensuring that spectrum can continue to serve the public rather than lying fallow unnecessarily, even on a temporary basis."⁹ During the past thirteen years, the flexibility provided by this much-needed capacity has proven instrumental to DBS providers.

II. GRANT OF THIS REQUEST WOULD SERVE THE PUBLIC INTEREST

DISH understand that QuetzSat-1 is being relocated temporarily to 61.5° W.L. to relieve EchoStar 15 so that it, in turn, can relocate to 44.9° W.L.¹⁰ DISH further understands that QuetzSat-1 will remain at that location until EchoStar 16 is able to take over duties from

⁷ The Rainbow STA was assigned to EchoStar Satellite L.L.C. ("ESLLC") in October 2005 as part of the sale of the Rainbow 1 satellite to EchoStar. *See* Stamp Grant, File No. SAT-STA-20050926-00183 (granted Sept. 30, 2005); *see also Rainbow 1 Assignment Order*, 20 FCC Rcd. 16868. The STA was then assigned from ESLLC to an affiliate, EchoStar Satellite Operating Corporation ("old ESOC"), in September 2006. *See* Application for Pro Forma Assignment of Licenses from EchoStar Satellite L.L.C. to EchoStar Satellite Operating Corporation, File No. SAT-ASG-20051129-00256 (granted Sep. 13, 2006).

⁸ *See* Public Notice, Policy Branch Information Actions Taken, DA 07-4655 (rel. Nov. 16, 2007) (consenting to the transfer of several authorizations as part of the spin-off).

⁹ *Rainbow STA Order*, 18 FCC Rcd. at 19828 ¶ 8; *see also EchoStar 1998 STA Grant*, 13 FCC Rcd. at 6394 ¶ 7 ("furthering the Commission's objective to make efficient use of available spectrum").

¹⁰ *See* File No. SES-STA-20120918-00839, Narrative, at 3-4 (filed Sept. 19, 2012).

QuetzSat-1 at the 61.5° W.L. orbital cluster later this year.¹¹ EchoStar 16 is currently scheduled to launch on or about November 20, 2012.¹²

The two unassigned channels 23 and 24 are currently being operated subject to STA on EchoStar 15, which QuetzSat-1 will replace at the 61.5° W.L. orbital cluster. Like EchoStar 15,¹³ QuetzSat-1 can support the capacity needs of DISH to provide High Definition programming to subscribers. The requested STA will continue to ensure that channels 23 and 24 remain available to provide services to DISH's customers. DISH agrees to comply with the same conditions set forth in the order authorizing EchoStar to operate EchoStar 15 over Channels 23 and 24.¹⁴

III. WAIVER PURSUANT TO SECTION 304 OF THE ACT

In accordance with Section 304 of the Communications Act of 1934, as amended, 47 U.S.C. § 304, DISH hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

¹¹ *Id.*

¹² See Letter from Stephanie A. Roy, Counsel for EchoStar Satellite Operating Corporation, to Marlene H. Dortch, FCC (Oct. 16, 2012), *filed in* File Nos. SAT-STA-20120315-00049; SES-STA-20120614-00508; ES-STA-20120316-00275; SES-STA-20120316-00274.

¹³ See File No. SAT-STA-20100615-00134, Narrative at 2 (filed June 15, 2010).

¹⁴ See Stamp Grant, File No. SAT-STA-20110525-00096 (granted May 27, 2011); EchoStar Corporation, Application for Special Temporary Authority to Operate the EchoStar 15 Satellite on Channels 23 and 24 at the 61.55° W.L. Orbital Location, *Order and Authorization*, 25 FCC Rcd. 10980, 10982-83 ¶¶ 9-17 (2010).

IV. CONCLUSION

For the foregoing reasons, DISH respectfully requests the grant of its application for special temporary authority to operate the QuetzSat-1 satellite at the 61.5° W.L. orbital location on channels 23 and 24 for 30 days.

Respectfully submitted,

/s/

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