

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

In the Matter of	)	
	)	
EchoStar Corporation and	)	
DISH Network Corporation	)	File No.:
	)	Call Sign: E050196
Petition for Waiver of	)	
Application Fees Pursuant to Section	)	
1.1117 of the Commission's Rules	)	

**PETITION FOR WAIVER OF APPLICATION FEES
FOR *PRO FORMA* TRANSFER OF CONTROL**

EchoStar Corporation (“EchoStar”) and DISH Network Corporation (“DISH”, and collectively the “Parties”) respectfully request that, pursuant to Sections 1.3 and 1.1119 of the Federal Communication Commission’s (“Commission”) rules,¹ and the Communications Act of 1934, as amended (the “Act”),² the Commission waive to the extent necessary certain application fees associated with a concurrently filed application seeking consent to the *pro forma* transfer of control of EchoStar’s authority to operate 1,000,000 receive-only earth stations (the “Earth Station Authorization”) with Quetzsat-1, a Mexico-licensed satellite operating at 77° W.L. (Call Sign E050196). Under this application, the Earth Station Authorization will ultimately be transferred on a *pro forma* basis to EchoStar BSS Corporation (“EBC”), which will be a wholly owned subsidiary of DISH.³

¹ 47 C.F.R. §§ 1.3, 1.1119.

² 47 U.S.C. § 158(d)(2).

³ See EchoStar Pro Forma Transfer Application, File No. SES-T/C-_____-_____- (filed June 11, 2019). For the Commission’s convenience, enclosed is a copy of the application materials to which this request for waiver is associated. Upon completion of the *pro forma* transfer, EchoStar 77 Corporation will be a wholly owned subsidiary of DISH Network Corporation.

The Commission has repeatedly granted requests for fee waiver made by EchoStar in the past for similar applications. The Act and the Commission's rules specifically provide that application fees may be waived for good cause shown and when the public interest would be served.⁴ As shown below, the public interest would be served by waiver because the application fee is vastly disproportionate to the Commission's actual costs of processing the Parties' transfer application. If the Commission determines that a fee is required, the Parties request that the Commission find that the Very Small Aperture Terminal ("VSAT") application fee of \$2,945 is appropriate. To avoid any delays in processing, the Parties have paid that \$2,945 fee.

I. BACKGROUND

As noted above, in the concurrent application, is the Parties are requesting, among other things, consent to transfer the Earth Station Authorization to EBC, which will be a wholly owned subsidiary of DISH. The application is one piece of a larger transaction agreement under which DISH will acquire the products, assets, and business operations of EchoStar's Broadcasting-Satellite Service business. In return, EchoStar shareholders will receive shares of DISH common stock.

The Commission's rules do not designate any specific charges for an application filed in the Direct Broadcast Satellite ("DBS") service, such as the concurrent application to *pro forma* transfer the Earth Station Authorization to DISH. The schedule of fees includes the following charges for similar applications:

- Assignment Application for a Fixed Satellite VSAT System: \$2,945.00⁵
- Assignment of Receive-Only Earth Stations: \$570.00 for the first station and

⁴ 47 U.S.C. § 158(d)(2); *see also* 47 C.F.R. §§ 1.3, 1.1119.

⁵ 47 C.F.R. § 1.1107(6)(c).

\$190.00 for each additional station.⁶

Even setting aside the *pro forma* nature of the application, the network of DBS earth stations is most like a VSAT system and should therefore be subject to—at most the — \$2,945 application fee for a transfer application for a VSAT system. EchoStar’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 as networks of technically identical small antennas that generally communicate with a larger hub station and operate in the 12/14 GHz frequency bands.⁷ The Commission has granted a similar waiver for earlier EchoStar applications based on its similarity to a VSAT system.⁸ Consistent with past Commission decisions, the Parties submitted the \$2,945 application fee to avoid processing delays. However, if the Commission determines that the fee for receive-only earth stations applies to each of the 1,000,000 consumer units, the Parties seek a waiver of what would be a \$190,000,350.00 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 good cause is shown and the public interest would be served.⁹ As demonstrated below, a fee of over

⁶ *Id.* § 1.1107(5)(c).

⁷ See Streamlining the Commission’s Rules and Regulations for Satellite Application and Licensing Procedures, *Order*, 11 FCC Rcd 21581, 21592 (1996).

⁸ See Letter from Mark Stephens, Chief Financial Officer, FCC, to Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C., IBFS File No. SES-ASG-20070228-00278 (May 9, 2007).

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).

\$190 million would be excessive for the Parties to affect the planned *pro forma* transfer of control and would far exceed the Commission's resources used to process the application.

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. The Commission has noted that the application fees "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 services provided to certain members of the public."¹⁰ However, in certain instances, when the Commission's schedule of filing fees may not reasonably approximate the costs involved in processing a particular application or may not otherwise serve the public interest, the Act and the Commission's Rules 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 review the instant *pro forma* transfer – the costs of which the application fees are designed to recover – are simply not required for reviewing the Parties' application. For example, the Commission need not review 1 million different stations to grant the application. Instead, as in the case of a VSAT network, the Commission would only need to review one set of technical parameters for all the technically identical earth stations if this were not a *pro forma* request. In similar contexts, the Commission has accepted application

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 47 U.S.C. § 158(d)(2); *see also* 47 C.F.R. §§ 1.3, 1.1119.

fees for VSAT networks. Thus, the \$2,945 application fee paid for this application is consistent with past practice and would fairly compensate the Commission for the costs associated with its review.

B. The Public Interest Would Be Served by Granting the Requested Fee Waiver

There is good cause to grant the Parties' request for a waiver of application fees for its application as it relates to the Earth Station Authorization. The imposition of a \$190 million fee for *pro forma* transfer requests of this kind was not what Congress or the Commission intended when the fee guidelines were adopted. Such an astronomical fee for a *pro forma* transfer application would be a barrier to any operator that desires to improve its internal operation and organization as proposed by the Parties. Filing fees should reimburse the government for the costs of processing applications, not act as a regulatory barrier to business.

III. CONCLUSION

For all of the aforementioned reasons, the Parties respectfully request that the Commission grant the requested fee waiver to the extent necessary in conjunction with its application to affect a *pro forma* transfer of the Earth Station Authorization.

Respectfully submitted,

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