



Federal Communications Commission  
Washington, DC 20554

International Bureau

DA 04-323

February 09, 2004

David K. Moskowitz  
Senior Vice President and General Counsel  
EchoStar Satellite Corporation  
5701 South Sante Fe  
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Re: Applications of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate a Geostationary Satellite in the Fixed Satellite Service using the Extended Ku-Bands at the 101° W.L. Orbital Location, File No. SAT-LOA-20030827-00179, SAT-AMD-20031126-00343, Call Sign: S2492

Dear Mr. Moskowitz:

In August 2003, EchoStar Satellite Corporation (EchoStar) filed an application (Application) to construct, launch and operate an extended Ku-band communications satellite in the Fixed-Satellite Service (FSS).<sup>1</sup> In November 2003, EchoStar filed an amendment to the Application (Amendment) outlining two system upgrades.<sup>2</sup> For the reasons discussed below, we dismiss the Amendment as incomplete and also dismiss the Original which was subsumed by the Amendment, without prejudice to refiling.<sup>3</sup>

Section 25.114(c) of the Commission's rules<sup>4</sup> requires all space station applicants to submit all applicable items of information listed in its subsections. Additionally, Section 25.112(a)(1) of the Commission's rules provides that an application will be unacceptable for filing if "the application is defective with respect to completeness of answers to questions, informational showing, internal

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<sup>1</sup> *Application of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate a Geo-Stationary Satellite in the Fixed Satellite Service Using the Allotted Extended Ku-band Frequencies at the 101° W.L. Orbital Location*, File No. SAT-LOA-20038027-00179, Call Sign S2492 (Application).

<sup>2</sup> *Amendment to Application of EchoStar Satellite Corporation for Authority to Construct, Launch and Operate a Geo-Stationary Satellite in the Fixed Satellite Service Using the Allotted Extended Ku-band Frequencies at the 101° W.L. Orbital Location*, File No. SAT-AMD-200311126-00343, Call Sign S2492 (Amendment).

<sup>3</sup> We note that EchoStar would not be charged an application fee only if it refiles the application with the required technical information for the exact application that was dismissed. See 47 C.F.R. § 1.1109(d).

<sup>4</sup> 47 C.F.R. § 25.114(c).

applicable items of information listed in its subsections. Additionally, Section 25.112(a)(1) of the Commission's rules provides that an application will be unacceptable for filing if "the application is defective with respect to completeness of answers to questions, informational showing, internal inconsistencies, execution or other matters of a formal character."<sup>5</sup> In the *First Space Station Reform Order*,<sup>6</sup> the Commission affirmed the policies embodied in these rules by continuing to require applications to be substantially complete when filed.<sup>7</sup> As the Commission noted, the procedures and rules it adopted will enable the Commission to establish satellite licensees' operating rights clearly and quickly, and as a result, allow licensees to provide service to the public much sooner than might be possible under its previous licensing procedures.<sup>8</sup>

In its Application and Amendment, EchoStar requests authority to construct, launch and operate a geostationary satellite orbit (GSO) FSS satellite at the 101° W.L. orbital location that would operate in a portion of the allotted extended Ku-band frequencies.<sup>9</sup> In its Amendment, EchoStar states that it proposes: "(1) to increase the service area over which uplink transmissions, used primarily for feeder link type earth stations, may be received; and (2) to add steerable uplink and fixed downlink spot beams to facilitate any needed coordination with previously licensed satellite systems in allotted extended Ku-band."<sup>10</sup>

Upon technical review, we find that EchoStar's Amendment is inconsistent in the frequency assignments it requests. In both the Application and the Amendment, EchoStar states that it requests authority to operate in the 10.70-10.75 GHz, and 11.20-11.45 GHz frequency bands (downlinks) and the 12.75-13.00 GHz and 13.15-13.20 GHz frequency bands (uplinks).<sup>11</sup> However, the Channel Frequency Plan outlined in Table A.4-1 of Section A.4 of the Attachment to the Amendment provides information that is significantly different from those frequencies proposed in both the Application and in other portions of the Amendment. Specifically, the Channel Frequency Plan indicates that transponders KuX-17 and KuX-18 will operate in the bands 10.9515-10.9785 GHz and 10.9615-10.9885 GHz, respectively.<sup>12</sup> Moreover, this Channel Frequency Plan as outlined, shows no transponders operating in the 10.7-10.75 GHz band as requested in both EchoStar's Application and Amendment. Further, in Section II of the Amendment, where EchoStar describes the proposed changes to the Application, it

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<sup>5</sup> 47 C.F.R. § 25.112(a).

<sup>6</sup> Amendment of the Commission's Space Station Licensing Rules and Policies, *First Report and Order and Further Notice of Proposed Rulemaking*, IB Docket No. 02-34, 18 FCC Rcd 10760, 10852 (para. 244) (2003) (*First Space Station Reform Order*).

<sup>7</sup> *First Space Station Reform Order*, 18 FCC Rcd at 10852 (para. 244), citing *Space Station Reform NPRM*, 17 FCC Rcd at 3875 (para. 84).

<sup>8</sup> *First Space Station Reform Order*, 18 FCC Rcd at 10765-66 (para. 4).

<sup>9</sup> Application at p. 2.

<sup>10</sup> Amendment at p. 1.

<sup>11</sup> See Application at 2 and Amendment, Attachment A at pps. 1 and 2.

<sup>12</sup> Amendment at Table A.4-1-Channel Frequency Plan, p. 4.

mentions neither the addition of new frequency bands, nor the deletion of previously requested bands.<sup>13</sup> Rather the Amendment cites only changes in the uplink service area, the resulting receive antenna gain decreases and downlink budget modifications, and the addition of spot beams in both the uplink and downlink transmission paths.<sup>14</sup>

Additionally, EchoStar also does not mention the inclusion of the new frequencies in Section A.1 of the Technical Annex to the Amendment, where it further describes the proposed technical changes. Here, EchoStar specifically states that none of the changes made to the design of the EchoStar-101W satellite will result in increased interference to any other user of the spectrum and that the changes instead involve increased flexibility, increased spectrum efficiency, or both. EchoStar also specifically states that the satellite will use the 11.2-11.45 GHz and a portion of the 10.7-10.75 GHz band for downlink transmissions, but does not mention any use of the 10.95-11.2 GHz frequency band.<sup>15</sup> Moreover, in Section A.24 of the Amendment, EchoStar argues that the power flux density (PFD) limits of Section 25.208 of the Commission's rules are sufficient to protect Fixed Service operations in the 10.7-10.95 GHz frequency band.<sup>16</sup> This further suggests that EchoStar plans to operate transponders at these frequencies, which are significantly different from those it indicates in the Channel Frequency Plan outlined in Table A.4-1.<sup>17</sup> Given these inconsistencies, we are unable to determine precisely which frequency assignments EchoStar seeks to use.

Finally, we find that EchoStar's Amendment fails to provide the information required in Section 25.114(c)(5) of the Commission's rules.<sup>18</sup> Section 25.114(c)(5) requires that each application contain information identifying which antenna beams are connected or switchable to each transponder and tracking, telemetry and control (TT&C) function. In its Amendment, EchoStar seeks to add the ability to switch the satellite receive beam to a pair of independently steerable uplink spot beams and the ability to switch downlink transmissions from the single large coverage beam to a total of nine fixed spot beams.<sup>19</sup> However, EchoStar fails to provide technical information to indicate which transponders will be connected to which spot beam in either the uplink or downlink direction.

Thus, for the above mentioned reasons, we find EchoStar's Amendment to be both incomplete and internally inconsistent. Accordingly, pursuant to the Commission's rules on delegated authority, 47 C.F.R. § 0.261(a)(4), we find that the Amendment (File No. SAT-AMD-20031126-00343) is defective

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<sup>13</sup> Amendment at p. 3.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Amendment at Attachment A, Section A.24, p. 26.

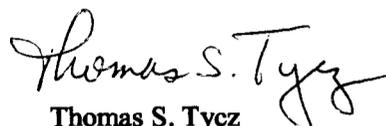
<sup>17</sup> Amendment at Table A.4-1-Channel Frequency Plan, p. 4.

<sup>18</sup> 47 C.F.R. § 25.114(c)(5).

<sup>19</sup> Amendment at Attachment A, Section A.1, p. 1

and thus unacceptable for filing. We therefore, consistent with Section 25.112(a) of the Commission's rules, 47 C.F.R. §25.211(a), dismiss the Amendment and the underlying application (File No. SAT-LOA-20038027-00179), which was subsumed by the Amendment.

Sincerely,



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