

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
EchoStar Satellite Corporation	)	
Modification of Ka-Band Authorization	)	IBFS Nos. SAT-MOD-20000222-00061
	)	SAT MOD-20000222-00062
	)	
	)	Call Signs S2178; S2179
Celsat America, Inc.	)	
Modification of License to Authorize	)	
Geostationary Satellite Orbit Mobile Satellite	)	IBFS Nos. SAT-AMD-19970925-00124
Service Feeder Link Operations in the Ka-Band	)	SAT-AMD-19980123-00009
	)	SAT-AMD-20011103-00153
Petition for Reconsideration	)	
	)	Call Signs S 2139

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 7, 2002**

**Released: May 7, 2002**

By the Chief, International Bureau:

**I. INTRODUCTION**

1. By this Order we deny EchoStar Satellite Corporation’s (EchoStar) petition for reconsideration of the International Bureau’s Order denying EchoStar’s application to modify its Ka-Band authorization.<sup>1</sup> We conclude that EchoStar has failed to offer any new facts or evidence that was not before the Bureau at the time we denied its application. Nor does EchoStar demonstrate a material error or omission in the order. We also deny EchoStar’s request to reconsider the Bureau’s order assigning Celsat America, Inc. Ka-band spectrum.<sup>2</sup> Accordingly, as set forth below, we deny the petition and reaffirm the initial orders.

**II. BACKGROUND**

2. In May 1997, as part of the Commission’s first Ka-band space station processing round (first round), the International Bureau authorized EchoStar to launch and operate a geostationary satellite orbit (GSO) satellite system to provide fixed satellite service in the Ka-band.<sup>3</sup> EchoStar’s authorization

<sup>1</sup> EchoStar Satellite Corporation, Application For Modification of Ka-Band Authorization, *Memorandum Opinion and Order*, 16 FCC Rcd 14300 (Int’l Bur. 2001) (“August Order”).

<sup>2</sup> Celsat America, Inc., Modification of License to Authorize Geostationary-Satellite Orbit Mobile Satellite Service Feeder Link Operations in the Ka-band, *Order and Authorization*, 16 FCC Rcd 14278 (Int’l Bur. 2001).

<sup>3</sup> EchoStar Satellite Corporation, Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, 13 FCC Rcd 5664 (1997) (“EchoStar (continued....)”).

permits it to use 500 megahertz of spectrum in the 29.5-30.0 GHz band (uplink) and 500 megahertz of spectrum in the 19.7-20.2 GHz band (downlink) at the 83° W.L. and 121° W.L. orbital locations. EchoStar was authorized to use the total amount of spectrum requested in its application. EchoStar did not decline or seek reconsideration of its authorization.

3. In October 1997, the Bureau initiated a second Ka-band satellite space station processing round (second round) inviting interested parties to file applications for consideration in that round. The deadline or cut-off date was December 22, 1997. In response, 12 applicants filed for GSO systems. One applicant requested the 500 megahertz of uplink and 500 megahertz of downlink available at the 83° W.L. and 121° W.L. orbital locations. EchoStar did not file an application for consideration in the second round. Instead, in February 2000, over two years after the cut-off date for filing in the second round, EchoStar filed an application to modify its Ka-band authorization to add additional spectrum at the 83° W.L. and 121° W.L. orbit locations. Specifically, in its application, EchoStar requested authority to add 500 megahertz of spectrum (28.35-28.6 GHz and 29.25-29.5 GHz) for its uplink operations, and 500 megahertz of spectrum (18.3-18.8 GHz) for its downlink operations. EchoStar claimed its application was a minor modification and should be treated as part of the first processing round. Alternatively, if the Commission should determine the application was a major modification, EchoStar requested a waiver of the processing round rules. EchoStar asserted it could use the spectrum more efficiently and in a faster time frame than any of the second round applicants. Several first round licensees and second round applicants opposed EchoStar's application.

4. In August 2001, in conjunction with the second processing round, the Bureau denied EchoStar's application to modify its Ka-band system. The Bureau found that EchoStar's application, filed four years after the cut-off date for the first round, was grossly untimely.<sup>4</sup> The Bureau explained that processing round procedures, including cut-off deadlines, ensure orderliness, expedition and finality in the licensing process. In addition, the Bureau rejected EchoStar's assertion that the application was a minor modification and thus could be granted outside of the processing round. To the contrary, the Bureau stated that EchoStar's application increases the potential for interference and changes its proposed frequencies and thus if considered, would have to be treated as a major modification.<sup>5</sup> Applications proposing major modifications lose their status in the processing group. The Bureau also found that EchoStar failed to support a waiver of the processing round rules. The Bureau stated it could not rely on EchoStar's unsupported claim that it would make "first use of the spectrum."<sup>6</sup> Finally, the Bureau concluded that granting EchoStar's application would undermine the Commission's processing round rules and policies, and that reopening the first processing round would not serve the public interest. Because spectrum not assigned in the first round was made available in the second round, and two applicants expressed interest in the same spectrum, then granting EchoStar's application would disrupt the second processing round as well.<sup>7</sup>

5. On August 3, 2001, as part of the second round, Bureau assigned the 500 megahertz of spectrum at each of the 83° W.L. and 121° W.L. orbital locations to a qualified entity that filed a timely

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*Authorization*"). The terms "Ka-band" or "28 GHz band" refer to the space-to-Earth (downlink) frequencies at 17.7-20.2 GHz and the corresponding Earth-to-space (uplink) frequencies at 27.5-30.0 GHz.

<sup>4</sup> *August Order*, 16 FCC Rcd at 14302.

<sup>5</sup> *Id.* at 14304.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 14305.

application in the second processing round, Celsat America, Inc. (Celsat).<sup>8</sup> EchoStar filed a request for reconsideration of the order denying its application as well as the order granting the spectrum to Celsat.

6. In its petition, EchoStar contests only the Bureau's finding that a waiver of the processing round rules would not serve the public interest. EchoStar claims that it is ready to use "most of" the spectrum at 121° W.L. as early as 2002.<sup>9</sup> EchoStar states that, in light of what it claims is a lack of success with Mobile Satellite Service (MSS) such as that proposed by Celsat, the Bureau "inappropriately favored the uncertainty" of Celsat's use of the spectrum over EchoStar's system.<sup>10</sup> Alternatively, EchoStar requests that the Bureau keep the proceedings open and grant EchoStar's application in the event Celsat's license becomes invalid.

7. Celsat responds that EchoStar's petition presents arguments already considered by the Bureau and thus the petition should be dismissed as repetitious.<sup>11</sup> Celsat states that it filed a timely application for consideration in the second processing round and was an active participant in industry led meetings to design an orbital assignment plan for second round applicants. Celsat asserts that EchoStar's claim that it will "make first use" of the spectrum is mere speculation.<sup>12</sup> Celsat also states that while EchoStar claims it is prepared to use 800 megahertz of spectrum at the 121° W.L. orbital location, if the Commission were to grant EchoStar's application, then the remaining 200 megahertz of spectrum at this location and the 500 megahertz of spectrum at 83° W.L. would lay "fallow indefinitely" thereby undermining EchoStar's claim of efficient use of the spectrum.<sup>13</sup> EchoStar replies that Celsat's response did not address EchoStar's request that the Commission hold the reconsideration proceeding open and license the spectrum to EchoStar in the event Celsat's authorization should lapse.

### III. DISCUSSION

8. We find nothing in EchoStar's petition that leads us to change our decision in the *August Order* denying its application. As noted in the *August Order*, the Commission's processing round rules and policies would be seriously undermined if the Commission accepted applications any time an untimely applicant asserted it could put spectrum to use in a more efficient manner. Processing rounds often involve new, innovative and commercially unproven satellite services in frequency bands not previously used to provide satellite service. They afford an opportunity for qualified system proponents to compete in the marketplace and allow consumer choice to determine the success of individual offerings, technologies and competitors. Thus, we reject EchoStar's assertion that the Bureau should have considered the likelihood of Celsat's proposed system in its decision. As always, we believe outcomes should be dictated by the service market and not by regulatory decision.

9. Even if the Bureau were to consider EchoStar's claim that it would make first use of the spectrum, EchoStar has not made a compelling argument. EchoStar states that it "stands ready to use most" of the additional spectrum it requests at the 121° W.L. orbital location. Specifically, EchoStar claims that in 2002 it will be able to use 300 megahertz of this spectrum at 121° W.L. It does not state, however, when it will use the remaining 200 megahertz at this location, or any of the additional 500

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<sup>8</sup> Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band, *Order*, 16 FCC Rcd 14389 (Int'l Bur. 2001).

<sup>9</sup> EchoStar Satellite Corporation's Petition for Reconsideration, filed September 4, 2001, at 2 ("*EchoStar Petition*").

<sup>10</sup> *EchoStar Petition* at 4.

<sup>11</sup> Celsat's Opposition to Petition for Reconsideration of EchoStar Satellite Corporation, filed September 19, 2001 at 2 ("*Celsat Opposition*").

<sup>12</sup> *Celsat Opposition* at 6.

<sup>13</sup> *Id.*

megahertz of spectrum it requests at the 83° W.L. orbital location. As a result, we find no reason to revoke Celsat's authorization. Like all Ka-band licensees, Celsat must bring its authorized spectrum at 121° W.L. and 83° W.L. into use before a date certain or lose its authorization. Celsat has a critical interest in working to put the spectrum at 121° W.L. and 83° W.L. into use in a timely manner.

10. Finally, we deny EchoStar's request to keep the proceeding open and grant EchoStar's waiver and authorization in the event Celsat's authorization becomes invalid. Consequently, we also deny EchoStar's request for reconsideration of the Celsat order and authorization. EchoStar has cited no rule or policy that entitles it to priority to the spectrum at 121° W.L. and 83° W.L. and we find no reason to give EchoStar precedence over other interested entities in the event this spectrum should become available. If spectrum should become available at these locations, we will consider entry opportunities at that time.

#### IV. CONCLUSION AND ORDERING CLAUSES

11. Based on the foregoing, we deny EchoStar's request to reconsider the Bureau's Memorandum Opinion and Order, 16 FCC Rcd 14300 (Int'l Bur. 2001) in the above captioned proceeding. We also deny EchoStar's request to reconsider the Order and Authorization of Celsat America, Inc., 16 FCC Rcd 14278 (Int'l Bur. 2001).

12. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by EchoStar Satellite Corporation on September 4, 2001 is DENIED.

13. This Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau