

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

In the Matter of)	
)	
EchoStar Satellite L.L.C.)	
)	
Application for Authority to Modify)	File Nos. DBS-88-01
Its Direct Broadcast Satellite Authorization)	SAT-MOD-20031219-00372
)	
Application to Make Minor Modification; Request)	SAT-MOD-19980817-00065; SAT-STA-
For Renewals of Special Temporary Authority)	19991006-00102; SAT-STA-20000217-
)	00060; SAT-STA-20010104-00003; SAT-
)	STA-20010626-00060; SAT-STA-20011221-
)	00144; SAT-STA-20020617-00096; SAT-
)	STA-20021223-00243
)	
)	Call Sign: S2621

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2004

Released: March 31, 2004

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant EchoStar Satellite L.L.C.’s (EchoStar) application to modify its Direct Broadcast Satellite (DBS) authorization at the 157° W.L. orbital location. EchoStar was authorized to operate its EchoStar 4 satellite on DBS channels 1, 3 and 5 at 157° W.L. but due to technical constraints, it requested authority to use channels 7 and 11, instead of 3 and 5. We find that granting this request allows EchoStar to use the total number of channels authorized at this location to the benefit of U.S. consumers. In addition, we dismiss several pending applications involving the operations of EchoStar 4 at other orbital locations.

II. BACKGROUND

2. In August 1989, EchoStar was granted a construction permit for a DBS system to operate 11 channels at a western orbital location.¹ In May 2002, the Satellite Division addressed EchoStar’s longstanding request for a DBS western orbital location, and after concluding that EchoStar had satisfied

¹ EchoStar currently operates a DBS system consisting of eight satellites at the 61.5° W.L., 110° W.L., 119° W.L., 148° W.L. and 157° W.L. orbital locations. EchoStar operates these satellites in the 12.2-12.7 GHz band (space-to-Earth) and 17.3-17.8 GHz band (feeder links, Earth-to-space).

the relevant due diligence obligation, directed EchoStar to select its channel assignments.² Although EchoStar was initially directed to select 11 channels at one orbital location, it subsequently requested and received authority to operate eight DBS channels at the 148° W.L. orbital location, and to relocate an operating satellite, EchoStar 4, to use three channels at the 157° W.L. orbital location.³ For the 157° W.L. orbital location, the Bureau assigned EchoStar to channels 1, 3 and 5.⁴

3. In its modification application, EchoStar requests a reassignment of its DBS channels at the 157° W.L. orbital location from channels 3 and 5 to channels 7 and 11.⁵ EchoStar states that the EchoStar 4 satellite cannot operate on channels 3 and 5 because the transponders associated with these frequencies are not sustainable.⁶ EchoStar notes, however, that other transponders on EchoStar 4 are functional and thus capable of providing DBS service from other channels. Permitting EchoStar to use the alternate channels, it asserts, will allow EchoStar to use the total number of channels it was assigned, maximizing service to its customers. Without the reassignment, EchoStar states it would be precluded from using two-thirds of its assigned spectrum.⁷ EchoStar further notes that it is currently the only entity authorized to provide DBS service from the 157° W.L. orbit location and thus granting the modification will not cause harmful interference to any authorized user of the spectrum.⁸ In addition, EchoStar asserts that because it will be using the same number of channels at this location, grant of its request will not prejudice other entities interested in operating at 157° W.L. in the future.⁹

4. EchoStar also requests a waiver of the Commission's DBS geographic service rule. EchoStar states that the EchoStar 4 satellite was designed and configured to operate at the 119° W.L. orbital location where it was able to provide service to Alaska and Hawaii, not the 157° W.L. orbital location. From the 157° W.L. orbital location, the satellite beam intended for Hawaii and Alaska will now reach likely unpopulated areas of the Pacific Ocean.¹⁰ EchoStar asserts, however, that it is providing service to Alaska and Hawaii using its satellites at the 119° W.L. and 110° W.L. orbital locations.¹¹ Consequently, EchoStar asserts, a waiver of the geographic service rules for EchoStar 4 at 157° W.L. will not jeopardize service it is currently providing to residents in Alaska and Hawaii.

5. EchoStar's modification application was placed on public notice.¹² No objections or comments were received in response to the Notice.

² EchoStar Satellite Corporation, Assignment of Direct Broadcast Satellite Orbital Position and Channels, *Memorandum Opinion and Order*, 17 FCC Rcd 8827 (Sat. Div., Int'l Bur. 2002).

³ EchoStar Satellite Corporation, Assignment of Direct Broadcast Satellite Orbital Position and Channels, *Order*, 18 FCC Rcd 9396 (Sat. Div., Int'l Bur. 2003) (*EchoStar Assignment Order*).

⁴ *Id.*, 18 FCC Rcd at 9399.

⁵ EchoStar Satellite Corporation, Application for Authority to Modify Its Direct Broadcast Satellite Authorization, File No. SAT-MOD-20031219-00372, filed December 19, 2003 (*EchoStar Modification Application*). In December 2003, EchoStar was granted special temporary authority, with conditions, to use channels 7 and 11 at the 157° W.L. orbital location. EchoStar Satellite Corporation Special Temporary Authority, File No. SAT-STA-20030903-00301 (grant stamped by Jennifer Gilsenan, Chief, Policy Branch, December 10, 2003).

⁶ *EchoStar Modification Application* at 4.

⁷ *EchoStar Modification Application* at 5.

⁸ *EchoStar Modification Application* at 6.

⁹ *EchoStar Modification Application* at 6.

¹⁰ *EchoStar Modification Application* at 7.

¹¹ *EchoStar Modification Application* at 8.

¹² Public Notice, Policy Branch Information, Report No. SAT-00817 (Jan. 15, 2004).

6. We also address several applications involving the operations of EchoStar 4 at various other orbital locations. EchoStar 4 was initially authorized to operate at the 119.2° W.L. orbital location.¹³ As a result of serious technical anomalies experienced shortly after launch, EchoStar 4 was not able to provide backbone programming as originally intended. Thus, EchoStar filed a modification application to relocate EchoStar 4 to the 148° W.L. orbit location.¹⁴ While this application was pending, EchoStar 4 received special temporary authorizations (STA) to move the satellite to various orbital locations in order to maximize its use and allow EchoStar to reconfigure its expanding fleet of satellites. To maintain flexibility to organize its satellite fleet, EchoStar filed several applications to extend the temporary authorizations “to the extent necessary.”¹⁵

III. DISCUSSION

7. *Channel Reassignment.* We grant EchoStar’s unopposed request to use DBS channels 7 and 11. We find that this action will result in more efficient use of spectrum capacity and allow EchoStar to maximize service to its customers. Without a modification, EchoStar would have to operate on fewer channels than provided in its authorization. Because the EchoStar 4 satellite cannot fully utilize the spectrum at channels 3 and 5, this valuable spectrum would go unused or underused to the detriment of U.S. consumers. In the *EchoStar Assignment Order*, we noted that EchoStar 4 is not operating at full capacity. We reiterate that, to ensure continuity of service, EchoStar must file a timely application for a replacement satellite before EchoStar 4 is no longer able to provide service from 157° W.L.¹⁶

8. *Waiver of Geographic Service Rule.* In addition, we grant EchoStar’s request for a waiver of the DBS geographic service rule for the operation of EchoStar 4 at the 157° W.L. orbit location. The Commission’s geographic service rule states that licensees acquiring DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the authorized orbit location.¹⁷ As EchoStar states, EchoStar 4 was not designed and configured to operate from 157° W.L. EchoStar 4 was specifically designed to service Alaska and Hawaii from the 119° W.L. orbital location. Operation of the EchoStar 4 satellite at 157° W.L. places the Alaska and Hawaii antenna beam at unintended and uninhabited areas west of Hawaii.¹⁸ Consequently, service to Alaska and Hawaii is not technically feasible from EchoStar 4 at the 157° W.L. orbit location.

9. The Commission may waive a rule for good cause shown.¹⁹ Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation would better serve the public interest than a strict adherence to the general rule.²⁰ Generally, the Commission may grant a

¹³ EchoStar Corporation, Directsat Corporation, EchoStar DBS Corporation, *Memorandum Opinion and Order*, 13 FCC Rcd 8595 (1998).

¹⁴ EchoStar Satellite Corporation and EchoStar DBS Corporation, Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, SAT-MOD-19980817-00065 (filed Aug. 17, 1998).

¹⁵ EchoStar Satellite Corporation, Applications to Extend or Renew Special Temporary Authority, file nos. SAT-STA-19991006-00102 (to operate EchoStar 4 at 110.2° W.L.); SAT-STA-20000217-00060 (to operate EchoStar 4 at 148° W.L.); SAT-STA-20010104-00003 (to operate EchoStar 4 at 119.35° W.L.); SAT-STA-20010104-00003 (to operate EchoStar 4 at 119.35° W.L.); SAT-STA-20010626-00060 (to operate EchoStar 4 at 119.35° W.L.); SAT-STA-20011221-00144 (to operate EchoStar 4 at 119.35° W.L.); SAT-STA-20020617-00096 (to operate EchoStar 4 at 119.35° W.L.); and SAT-STA-20021223-00243 (to operate EchoStar 4 at 119.35° W.L.).

¹⁶ *EchoStar Assignment Order*, 18 FCC Rcd at 9398.

¹⁷ 47 C.F.R. § 25.148(c).

¹⁸ *EchoStar Modification Application* at 7.

¹⁹ 47 C.F.R. § 1.3.

²⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990).

waiver of its rules in a particular case if the relief requested would not undermine the policy objective of the rule and would otherwise serve the public interest.²¹

10. Although the Commission's geographic service rule embodies an important policy, it has on occasion granted waivers of this requirement.²² A waiver of section 25.148(c) of the Commission's rules will enable EchoStar 4 to provide maximum service in light of the satellite's power and capacity limitations. As EchoStar states, there is no western orbital location from which EchoStar 4 could ensure viable service to Alaska and Hawaii.²³ We note that EchoStar is providing service to these states from its satellites at the 119° W.L. orbital location. Thus, we conclude that a waiver in this limited instance will not result in a degradation of service currently provided to customers in Alaska and Hawaii. If EchoStar replaces the EchoStar 4 satellite at 157° W.L., the geographic service rule will apply to the replacement satellite.

11. *Pending Applications.* As a result of EchoStar's authorization to operate EchoStar 4 at the 157° W.L. orbital location, we dismiss those applications pertaining to the operations of EchoStar 4 at other orbital locations.

IV. CONCLUSION AND ORDERING CLAUSES

12. Based on the foregoing, we find that the public interest will be served by granting EchoStar's request to operate on channels 7 and 11. Thus, we grant EchoStar's modification application and request for waiver of the geographic service rule, 47 C.F.R. § 25.148(c). In addition, due to the location of EchoStar 4 at 157° W.L., we dismiss those pending applications seeking authority to operate the satellite at other orbit locations.

13. Accordingly, IT IS ORDERED, that the Application for Modification of DBS Authorization filed by EchoStar Satellite L.L.C., File No. SAT-MOD-20031219-00372, is GRANTED.

14. IT IS FURTHER ORDERED, that EchoStar's request for a waiver of the Commission's DBS geographic service rule, 47 C.F.R. 25.148(c), is granted for the operation of EchoStar 4 from the 157° W.L. orbit location. In the event EchoStar Satellite L.L.C. replaces the EchoStar 4 satellite at the 157° W.L. orbit location, the Commission's geographic service rule will apply to the replacement satellite.

15. IT IS FURTHER ORDERED, that EchoStar Satellite L.L.C. shall provide the Commission with all information it requires in order to modify the Appendix 30 Broadcasting-Satellite Service (BSS) Plan and associated Appendix 30A feeder-link Plan, in accordance with the International Telecommunication Union (ITU) Radio Regulations. EchoStar Satellite L.L.C. shall be responsible for all cost recovery fees associated with these ITU filings. Any radio station authorization for which coordination has not been completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions required to effect coordination or obtain the agreement of other Administrations. See 47 C.F.R. § 25.111(c).

16. IT IS FURTHER ORDERED that the authorization granted in this Order is subject to the following conditions: 1) until the ITU Region 2 BSS Plan and its associated Feeder Link Plan are modified to include the technical parameters of EchoStar 4 and its associated Feeder Links, this satellite

²¹ *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

²² EchoStar Satellite Corporation, Authority to Make Minor Modification of Direct Broadcast Satellite, *Order and Authorization*, 18 FCC Rcd 7886 (Sat. Div., Int'l Bur. 2003).

²³ *EchoStar Modification Application* at 7.

system shall not cause greater interference than that which would occur from the current U.S. assignments in the Region 2 BSS Plan at 157° W.L. to other BSS networks operating pursuant to the ITU Region 2 Band Plan or other services or satellite systems operating in accordance with the ITU Radio Regulations; and 2) no protection from interference caused by operating networks or other administrations is guaranteed to EchoStar 4 unless and until Appendices 30 and 30A plan modification procedures are successfully and timely completed.

17. IT IS FURTHER ORDERED, that the Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, File No. SAT-MOD-19980817-0065 is DISMISSED as moot. Further, the following applications for extension or renewal of special temporary authority are dismissed: SAT-STA-19991006-00102; SAT-STA-20000217-00060; SAT-STA-20010104-00003; SAT-STA-20010104-00003; SAT-STA-20010626-00060; SAT-STA-20011221-00144; SAT-STA-20020617-00096; and SAT-STA-20021223-00243.

18. IT IS FURTHER ORDERED, that EchoStar Satellite L.L.C. has 30 days from the date of the release of this Order to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

19. Assignment of any orbital location is subject to change by summary order of the Commission on 30 days notice and does not confer any permanent right to use the orbit and spectrum.

20. Neither this Order nor any right granted by this Order shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, or by transfer of control of any corporation holding this authorization, to any person except on application to the Commission and upon a finding by the Commission that the public, interest, convenience and necessity will be served thereby.

21. This action is taken pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief, Satellite Division
International Bureau