



Federal Communications Commission
Washington, D.C. 20554

DA 09-1149

May 27, 2009

Pantelis Michalopoulos, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, D.C. 20036-1795

Re: Application File No. SAT-LOA-20080523-00112 (Call
Sign: S2752)

Dear Mr. Michalopoulos:

This letter refers to the above-referenced application filed by EchoStar Corporation (EchoStar) on May 23, 2008. In this application, EchoStar seeks authority to construct, launch, and operate a C-band Fixed Satellite Service (FSS) space station at the 84.9° W.L. orbital location. As set forth below, EchoStar is considered subject to the presumption specified in Section 25.159(d) of the Commission's rules as a result of EchoStar missing three space station milestones within a three-year period.¹ In its application, EchoStar did not rebut the presumption or request a waiver of the rule. Consequently, we return the application as unacceptable for filing without prejudice to refile.

Section 25.112(a) of the Commission's rules provides that the Commission will return an application as unacceptable for filing if the application is defective with respect to completeness of answers or informational showings, is internally inconsistent, or does not substantially comply with the Commission's rules unless a waiver of the rules is requested.² EchoStar's application does not comply with the Commission's rules. Further, EchoStar did not request a waiver of the rules.

Section 25.159(d) provides that if a space station licensee misses three implementation milestones within a three-year period, there is a presumption that the licensee obtained one or more of the licenses for speculative purposes.³ Under these circumstances, Section 25.159(d)

¹ 47 C.F.R. § 25.159(d).

² 47 C.F.R. § 25.112(a).

³ 47 C.F.R. § 25.159(d). *See* 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, 10836 (2003) (*Space Station Licensing Reform Order*). Section 25.159(d) does not apply to licenses or applications in the Direct Broadcast Satellite service. *Space Station Licensing Reform Order*, 18 FCC Rcd at 10760, n. 4. It does apply to 17/24 GHz BSS applications and licenses. Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting Satellite Service and for the Satellite Services

imposes a limit on the number of pending applications and licensed but unlaunched satellites that an entity may have. Specifically, the rule states that “[u]nless the licensee rebuts this presumption, it will not be permitted to file another [application] in any frequency band if it has two or more satellite applications pending, or two licensed-but-unbuilt satellite systems of any kind.”⁴ This limit remains in effect until the licensee provides adequate information to demonstrate that it is very likely to construct its licensed facilities if it were allowed to file more applications.⁵

At the time it filed its May 23, 2008 application for a C-band satellite at the 84.9° W.L. orbital location, EchoStar had missed three space station milestones within a three-year period. First, EchoStar did not satisfy the third milestone (to begin physical construction) for its licensed Ka-band space station authorization at 117° W.L. It instead surrendered this authorization on the December 8, 2006 milestone deadline. Further, EchoStar did not satisfy the third milestones for either its licensed Ku-band satellite at 109° W.L. or its licensed Ku/Ka-band satellite at 121° W.L. Rather, EchoStar surrendered both of these licenses on the October 1, 2007 milestone deadline. These three license surrenders triggered the presumption in Section 25.159(d) that EchoStar obtained one or more of the licenses for speculative purposes.⁶

In addition, when it filed the May 23, 2008 application, EchoStar had five pending Broadcasting-Satellite Service (BSS) applications and one authorized but unlaunched FSS satellite.⁷ Because EchoStar had more than two pending applications or two licensed but unlaunched satellites, Section 25.159(d) prohibited EchoStar from filing additional applications until it rebutted the presumption or justified a waiver of the rule. EchoStar’s May 23, 2008 application did not rebut the presumption or request a waiver.

Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-76, 22 FCC Rcd 8842, 8849 (2007).

⁴ 47 C.F.R. § 25.159(d).

⁵ *Id.* In adopting this rule, the Commission stated that a licensee that has a pattern of obtaining licenses and then surrendering them before a milestone deadline is subject to the presumption in the rule. *Space Station Licensing Reform Order*, 18 FCC Rcd at 10836, n. 463.

⁶ In addition, on March 9, 2009, EchoStar surrendered a license for a Ka-band satellite at the 97° W.L. orbital location. EchoStar surrendered this authorization one day after the milestone deadline for launching the satellite.

⁷ See SAT-MOD-20070323-00055 (current authorization for unlaunched FSS space station at 112.85° W.L., Call Sign S2636). See also then-pending BSS applications: File Nos. SAT-LOA-20020328-00050, SAT-AMD-20080114-00018, and SAT-AMD-20080213-00044 (for Call Sign S2440); SAT-LOA-20020328-00051 and SAT-AMD-20080114-00019 (for Call Sign S2441); SAT-LOA-20020328-00052, SAT-AMD-20080114-00020, and SAT-AMD-20080213-00043 (for Call Sign S2442); SAT-LOA-20070105-00001 and SAT-AMD-20080114-00021 (for Call Sign S2723); SAT-LOA-20070105-00003, SAT-AMD-20080114-00022, and SAT-AMD-20080213-00045 (for Call Sign S2725). Since May 23, 2008, the Commission has granted three of the five pending BSS applications (Call Signs S2723, S2725, and S2440). EchoStar has not yet launched any of the three newly-authorized satellites or its previously-licensed FSS satellite, while two BSS applications remain pending. Thus, Section 25.159(d) continues to apply.

Accordingly, pursuant to Section 25.112(a)(1) of the Commission's rules, 47 C.F.R. § 25.112(a)(1), and Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, we return EchoStar's application as unacceptable for filing without prejudice to refile.

Questions regarding this matter may be directed to Alyssa Roberts, Policy Branch, at (202) 418-7276.

Sincerely,

Robert G. Nelson
Chief, Satellite Division
International Bureau