

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

In the Matter of

EchoStar Satellite Corporation

Application for Special Temporary Authority to
Operate a Direct Broadcast Satellite

File No. 139-SAT-STA-96

ORDER

Adopted: November 25, 1996

Released: November 26, 1996

By the Chief, Satellite and Radiocommunication Division, International Bureau:

1. EchoStar Satellite Corporation ("EchoStar") requests an extension of its special temporary authority ("STA") to operate on odd-numbered channels 1-31 at 119° W.L. for a period of 180 days using its "USABSS-3" direct broadcast satellite.¹ Because we are concurrently granting EchoStar a license to cover its USABSS-3 facilities ("License to Cover Facilities") on assigned channels 1-21 at the 119° W.L. orbital location,² we need only address the issues raised regarding the EchoStar STA request for use of channels 23, 25, 27, 29, and 31 at 119° W.L. For reasons discussed below, we deny EchoStar's request.

2. On December 21, 1995, EchoStar was authorized to launch USABSS-3 for use in its eastern orbital location in the Direct Broadcast Satellite ("DBS") service and to operate at that

¹ *Public Notice*, Report No. SPB-58, File No. 139-SAT-STA-96, July 17, 1996.

² EchoStar's USABSS-3 satellite is actually located at 119.2° in order to accommodate Directsat's USABSS-4 operations at 118.8° which are being granted simultaneously for assigned frequencies. See *EchoStar Satellite Corporation*, 11 F.C.C. Rcd 3015 (1996).

location on eleven odd-numbered channels 1-21.³ On March 4, 1996, we granted EchoStar's original STA request to operate its DBS service using all sixteen transponders on USABSS-3, including five channels (23, 25, 27, 29, and 31) not assigned to EchoStar, for a six-month period⁴ as a "temporary bridge" to make more efficient use of spectrum resources until the launch and operation of Directsat's USABSS-4 satellite.⁵ Directsat is an affiliate of EchoStar.

3. EchoStar requests an extension of its STA to operate on channels that are assigned to - but currently unused by - Tempo Satellite, Inc. ("Tempo"), another DBS permittee.⁶ Directsat, an EchoStar affiliate, filed a similar request for STA to operate on Tempo's even-numbered channels.⁷ EchoStar states that grant of its STA extension request would serve the public interest by allowing it to offer a substantially expanded range of programming options that would otherwise not be possible. EchoStar also asserts that it hopes to use the additional capacity provided by the STA to test innovative technologies such as High Definition Television, or to augment the capabilities of existing technologies, *e.g.*, by linking to the Internet.

4. On August 16, 1996, Tempo opposed EchoStar's STA request, asserting, *inter alia*, that grant of EchoStar's request is barred by the Communications Act of 1934, as amended ("Communications Act"),⁸ and because it would cause serious prejudice to Tempo without serving the public interest.⁹ In a Joint Reply filed with Directsat on August 26, 1996, EchoStar asserts that the Communications Act does not prevent the Commission from granting the requested authorization, that the authorization will serve the public interest, and that Tempo has failed to demonstrate that it will be prejudiced by the requested STAs. Finally, on September 6, 1996, Tempo filed a Reply reiterating its position that EchoStar and Directsat are not entitled to STAs for Tempo's 119° W.L. assigned channels as a matter of law.

³ *EchoStar Satellite Corporation*, 11 F.C.C. Rcd 3015 (1996).

⁴ EchoStar's earlier request for special temporary authority was granted in *EchoStar Satellite Corporation*, 11 F.C.C. Rcd 5351 (1996).

⁵ *Id.* at ¶ 6.

⁶ *Tempo Satellite, Inc.*, 7 F.C.C. Rcd 6597 (1992).

⁷ Directsat Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite, File No. 138-SAT-STA-96 (filed June 28, 1996). We deny Directsat's application in a concurrent order released today.

⁸ 47 U.S.C. §151. *et. al.*

⁹ Tempo filed a Consolidated Opposition ("Opposition") to both EchoStar's STA request and Directsat STA request, which argues that EchoStar and Directsat STA requests are barred by the Communications Act and could cause service disruptions and consumer confusion, contrary to the public interest. Tempo Opp. at 3. We dispose of Directsat's companion STA request in a separate order released today.

5. We find that extension of the STA is not in the public interest. EchoStar, when combined with Directsat,¹⁰ now has licenses to cover its assigned DBS facilities at 119° W.L.. As such, EchoStar has the capacity to serve the public from the 119° W.L. DBS orbital location. EchoStar was originally granted an STA to use TEMPO's 119° W.L. channels as a "temporary bridge" to provide 16 channel service until the launch of Directsat's USABSS-4 for combined 21 channel DBS service.¹¹ Tempo did not oppose this initial request. Directsat has now launched USABSS-4 and is ready to provide the remaining channels necessary for the full complement of the assigned 21 channels for EchoStar/Directsat DBS service. Based on this record, the original basis for the STA grant has disappeared, eliminating the support for continued authorization on channels that have been assigned to another licensee. EchoStar thus no longer needs Tempo's channels as a temporary bridge.

6. In addition, if we granted EchoStar's STA request, the reduction in service to subscribers that would result when Tempo ultimately begins its own DBS operations would likely cause consumer confusion. Some programming arrangements may be exclusive to EchoStar/Directsat, and may be unavailable to Tempo subscribers. Moreover, subscriber receive equipment may be proprietary so that Tempo's subscribers would not be able to subscribe to EchoStar/Directsat programming using Tempo receive equipment. EchoStar/Directsat subscribers may thus lose a significant portion of the programming provided by EchoStar/Directsat upon launch of Tempo's satellite to 119° W.L.; Tempo's channels represent one third of the programming capacity at 119° W.L.

7. We find that the language proposed by EchoStar to explain to subscribers the reduction in service will not suffice to overcome the resulting problems.¹² For instance, EchoStar suggests that subscriber notices state, "[s]hould the DISH Network be required to cease transmitting programming over [Tempo's] channels, we will provide you notice as far in advance as reasonably practicable..."¹³ We do not believe that customers will fully comprehend the reasons for reduction in service. We agree with Tempo that neither it nor the Commission should be burdened with answering customer complaints.¹⁴

¹⁰ See *Directsat Corporation and EchoStar Communications Corporation*, 10 F.C.C. Rcd 88 (1995).

¹¹ *EchoStar Satellite Corporation*, 11 F.C.C. Rcd 5351 (1996) at ¶ 6.

¹² EchoStar Request, at 8.

¹³ *Id.*, at 7.

¹⁴ Tempo Opp., at 8.

8. EchoStar's reliance on case precedent that authorizes conditional grant of STAs for use of spectrum is not persuasive.¹⁵ EchoStar cites Mobile Datacom Corp.¹⁶ and Newcomb Communications, Inc.¹⁷ both of which involved the use of the 1610-1626.5 MHz frequency band for service to a relatively small number of commercial customers, many of whom are U.S. government agencies. By contrast, EchoStar/Directsat may ultimately serve millions of residential customers. It would be far more difficult for millions of ordinary consumers to adapt to a reduction in service than it would be for a small number of commercial or governmental organizations. In addition, Mobile Datacom and Newcomb involved services proposed for use on satellites approaching the end of their licensed service lives¹⁸ and contain other limitations on the services provided, based on the specific facts of those cases. Conversely, EchoStar and Directsat are just beginning their respective licensed service periods. Finally, if Tempo launches, there is no way to avoid interference with the EchoStar system because the spacecraft will be co-located. By contrast, Mobile Datacom involved service from geostationary satellites, which are not co-located with non-geostationary Big LEO service. Moreover, we gave Mobile Datacom and Newcomb the opportunity to demonstrate non-harmful interference to the Big LEO licensees. This permits the potential for greater transition flexibility for Mobile Datacom and Newcomb as Big LEO satellites deploy. There is not a similar transition possibility between the co-located services of EchoStar and Tempo. EchoStar was simply permitted to operate on Tempo's channels as a "temporary bridge" until Directsat was launched. These cases are, therefore, inapposite to the circumstances presented in this case.

9. Under these specific circumstances we find that denial of EchoStar's request will best serve the public interest, convenience and necessity. We therefore deny EchoStar special temporary authority to operate on channels 23, 25, 27, 29, and 31 of USABSS-3, at the 119° W.L. orbital location.

10. Accordingly, pursuant to authority delegated by Section 0.261 of the Commission's Rules, 47 C.F.R. § 0.261, IT IS ORDERED that Application File No. DBS 139-SAT-STA-96 IS DENIED and EchoStar Satellite Corporation IS NOT AUTHORIZED to operate on channels 23, 25, 27, 29, and 31 of USABSS-3 at the 119° W.L. orbital location. Effective immediately.

¹⁵ See *Folkways Broadcasting Co., Inc. v. Federal Communications Commission*, 379 F.2d 447 (D.C. Cir. 1967), cited by EchoStar, provides no support for the EchoStar request because the court denied the Commission statutory authority to grant a temporary operations permit.

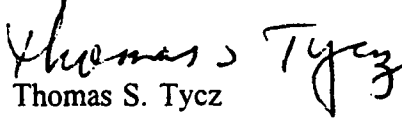
¹⁶ 10 F.C.C. Rcd 4552 (1995).

¹⁷ 8 F.C.C. Rcd 3631 (1993).

¹⁸ Mobile Datacom and Newcomb Communications use the GE American Communications' Spacenet-3 and GSTAR-3 fixed satellites for radio determination satellite service. See *Newcomb, id.*, at ¶ 12.

11. IT IS FURTHER ORDERED that EchoStar Satellite Corporation shall cease operations on channels 23, 25, 27, 29, and 31 USABSS-3 at the 119° W.L. orbital location immediately.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink that reads "Thomas S. Tycz". The signature is written in a cursive style with a large, stylized 'T' and 'y'.

Thomas S. Tycz
Chief, Satellite and Radiocommunication Division
International Bureau