

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

<p>In the Matter of</p> <p>Directsat Corporation</p> <p>Application for Special Temporary Authority to Operate a Direct Broadcast Satellite</p>	<p>File No. 138-SAT-STA-96</p>
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ORDER

Adopted: November 25, 1996

Released: November 26, 1996

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

1. Directsat Corporation ("Directsat") requests special temporary authority ("STA") to operate on even-numbered channels 2-32 at 119° W.L. using its "USABSS-4" direct broadcast satellite.¹ Because we are concurrently granting Directsat a license to cover its USABSS-4 facilities ("License to Cover Facilities") on assigned channels 2-20 at the 119° W.L. orbital location,² we need only address the issues raised regarding the Directsat STA request for use of channels 22, 24, 26, 28, 30, and 32 at 119° W.L. For reasons discussed below, we deny Directsat's request.

2. On September 9, 1996, Directsat was authorized to launch USABSS-4 for use from its eastern orbital location in the Direct Broadcast Satellite ("DBS") service and to operate at that

¹ See *Public Notice*, Report No. SPB-53, File No. 138-SAT-STA-96 (July 17, 1996).

² Directsat's USABSS-4 satellite is actually located at 118.8° in order to accommodate EchoStar's USABSS-3 operations at 119.2° which are being granted simultaneously for assigned frequencies. See *Directsat Corporation* 11 F.C.C. Rcd 10575 (1996).

location on ten even-numbered channels 2-20.³ Launch and successful placement of USABSS-4 compliments the EchoStar USABSS-3 broadcasting satellite⁴ which is currently licensed on odd-numbered channels 1-21 for the 119° W.L. DBS orbital location. EchoStar had previously been authorized to broadcast on all 16 of its transponders on USABSS-3, including five channels (23, 25, 27, 29, and 31) not assigned to EchoStar, for a period of six months as a "temporary bridge" until the launch and operation of Directsat's USABSS-4 satellite.⁵ EchoStar is an affiliate of Directsat.

3. Directsat requests an STA to operate on channels that are assigned to - but currently unused by - Tempo Satellite, Inc. ("Tempo"), another DBS permittee.⁶ EchoStar, a Directsat affiliate, filed a similar request for STA to operate on Tempo's odd-numbered channels.⁷ Directsat states that grant of its STA request would serve the public interest by allowing it to offer a substantially expanded range of programming options that would otherwise not be possible. Directsat 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 Directsat's STA request, asserting, *inter alia*, that grant of Directsat'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 EchoStar on August 26, 1996, Directsat 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,

³ *Id.*

⁴ Directsat is affiliated with EchoStar. See *Directsat Corporation and EchoStar Communications Corporation*, 10 F.C.C. Rcd 88 (1995)(application for transfer of control of Directsat Corporation from SSE Telecom, Inc. to EchoStar Communications Corporation granted).

⁵ EchoStar's earlier request for special temporary authority was granted in *EchoStar Communications Corporation*, 11 F.C.C. Rcd 5351 (1996).

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

⁷ EchoStar Satellite Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite, File No. 139-SAT-STA-96 (filed June 28, 1996). We deny EchoStar'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 Corporation's 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 EchoStar's companion STA request in a separate order.

Tempo filed a Reply reiterating its position that Directsat and EchoStar are not entitled to STAs for Tempo's 119° W.L. assigned channels as a matter of law.

5. We find that grant of the STA is not in the public interest. Directsat, when combined with EchoStar,¹⁰ now has licenses to cover its assigned DBS facilities at 119° W.L. As such, Directsat has the capacity to serve the public from the 119° W.L. DBS orbital location. EchoStar, Directsat's affiliate, 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 Directsat/EchoStar DBS service. Based on this record, the original basis for the STA grant to EchoStar has disappeared, eliminating the support for authorization on channels that have been assigned to another licensee. Directsat does not need Tempo's channels.

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 Directsat/EchoStar, 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 Directsat/EchoStar programming using Tempo receive equipment. Directsat/EchoStar subscribers may thus lose a significant portion of the programming provided by Directsat/EchoStar 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 Directsat to explain to subscribers the reduction in service will not suffice to overcome the resulting problems.¹² For instance, Directsat 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 Directsat Request, at 8.

¹³ *Id.*, at 7.

¹⁴ Tempo Opp., at 8.

8. Directsat'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, Directsat/EchoStar 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, Directsat and EchoStar are just beginning their respective licensed service periods. Finally, if Tempo launches, there is no way to avoid interference with the Directsat system because the spacecraft will be co-located. By contrast, Mobile Datacom involved service from geostationary satellites, which are not co-located with the 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 Directsat and Tempo. EchoStar, Directsat's affiliate, 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 Directsat's request will best serve the public interest, convenience and necessity. We therefore deny Directsat special temporary authority to operate on channels 22, 24, 26, 28, 30, and 32 of USABSS-4, at the 119° W.L. orbital location.

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.

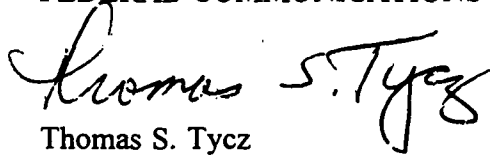
¹⁶ 10 F.C.C. Rcd 4552 (1995).

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.

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 138-SAT-STA-96 IS DENIED and Directsat Corporation IS NOT AUTHORIZED to operate on channels 22, 24, 26, 28, 30, and 32 of USABSS-4 at the 119° W.L. orbital location.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Thomas S. Tycz". The signature is written in a cursive style with a large initial 'T' and 'S'.

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