

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|                                     |   |              |
|-------------------------------------|---|--------------|
| In the Matter of the Application of | ) |              |
|                                     | ) |              |
| <b>EARTHWATCH INCORPORATED</b>      | ) | File No.     |
|                                     | ) | 85-SAT-ML-97 |
| For Modification of Its             | ) |              |
| Authorization to Construct,         | ) |              |
| Launch and Operate a Remote         | ) |              |
| Sensing Satellite                   | ) |              |
| System                              | ) |              |

**ORDER AND AUTHORIZATION**

Adopted: November 21, 1997

Released: November 24, 1997

By the Chief, International Bureau:

**I. Introduction**

1. In August, 1995, we authorized EarthWatch Incorporated ("EarthWatch") to construct, launch and operate a remote-sensing satellite system consisting of two low-Earth orbiting ("LEO") satellites to provide Earth exploration-satellite service.<sup>1</sup> In April, 1997, we modified EarthWatch's authorization to add two satellites to its system.<sup>2</sup> EarthWatch now requests a second modification to its initial authorization to increase the bandwidth for uplink telemetry, tracking and command ("TT&C") functions and to extend the dates for completing the construction and launch of its two additional satellites.<sup>3</sup>

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<sup>1</sup> See In the Matter of the Application of EarthWatch Incorporated For Authority to Construct, Launch, and Operate a Remote Sensing-Satellite System, *Order and Authorization*, 10 FCC Rcd 10467 (1995) ("*August 1995 Order*").

<sup>2</sup> See EarthWatch Incorporated, *Order and Authorization*, File No. 137-SAT-ML-96, DA 97-885 (released April 29, 1997) ("*EarthWatch Modification Order*").

<sup>3</sup> Letter dated May 27, 1997, to Cassandra Thomas, Deputy Chief, Satellite and Radiocommunication Division, International Bureau, Federal Communications Commission, from Howard J. Gannes, Vice President, EarthWatch Incorporated ("*EarthWatch Request*").

2. We grant EarthWatch's request to modify its authorized uplink TT&C frequencies and satellite construction completion and launch dates, subject to the conditions set forth in this Order and Authorization ("Order").

## II. Background

3. Our *EarthWatch Modification Order* describes in detail EarthWatch's remote-sensing satellite system. EarthWatch now requests that its authorization be modified so that it can use a 300 kHz channel at each of the 2085.6875 MHz and 2094.896 MHz center frequencies for its uplink TT&C transmissions, rather than the 30 kHz channels authorized in the *EarthWatch Modification Order*.<sup>4</sup> EarthWatch contends that its request for 30 kHz channels derived from a mistake in its initial application filed in July, 1996.<sup>5</sup>

4. In addition, EarthWatch requests a two year extension of the construction completion and launch date milestones for its two additional LEO satellites authorized in our *EarthWatch Modification Order* to June, 2000 and August, 2000, respectively.<sup>6</sup> It asserts that this extension is necessary due to unforeseen delays encountered by EarthWatch in receiving essential satellite components and establishing launch dates with its launch provider. EarthWatch states that it has begun construction of both satellites.<sup>7</sup> Earthwatch's request was placed on public notice, and no comments were received in opposition to the modification request.<sup>8</sup>

## III. Discussion

5. In reviewing EarthWatch's modification request we must determine (a) whether increasing the bandwidth for its uplink TT&C channels to 300 kHz will interfere with other authorized operations in the 2025-2110 MHz frequency band and (b) if an extension of the construction and launch milestones is justified under Section 25.117(d) of the Commission's

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<sup>4</sup> See Earth Watch Request at 1.

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

<sup>6</sup> See *id.* at 1-2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> See *Public Notice Report No. SPB-86* (June 27, 1997).

Rules.<sup>9</sup>

A. 300 kHz Channels in 2025-2110 MHz Frequency Band

6. EarthWatch proposes to conduct uplink TT&C transmissions for its two additional satellites using a 300 kHz channel at each of the 2085.6875 MHz and 2094.896 MHz center frequencies. In the *EarthWatch Modification Order*, we granted EarthWatch's request for authorization to utilize 30 kHz channels in its feeder uplinks for TT&C functions at these frequencies.<sup>10</sup>

7. We authorize EarthWatch to use a 300 kHz channel at each of the 2085.6875 MHz and 2094.896 MHz center frequencies, rather than the 30 kHz channels authorized in the *EarthWatch Modification Order*, in its feeder uplinks for TT&C transmissions to its two additional satellites. Such use, however, must be on a secondary status to all other authorized non-government users operating on a primary status in accordance with the Table of Frequency Allocations.<sup>11</sup> As a secondary user of the frequency band, EarthWatch shall not cause harmful interference to primary services in the frequency band and it cannot claim protection from harmful interference from primary services in the frequency band. In addition, EarthWatch will be required to complete frequency coordination with other primary services in the band. We expect that EarthWatch should be able to coordinate its expanded feeder uplink TT&C operations with other primary users of the frequency band, subject to the conditions set forth herein.

B. Construction Completion and Launch Time Extensions

8. EarthWatch requests an extension of its construction completion and launch milestones for its two LEO satellites authorized in the *EarthWatch Modification Order* to June, 2000 and August, 2000, respectively.<sup>12</sup> EarthWatch contends that the two year extension is necessary due to unforeseen delays encountered by EarthWatch in receiving essential satellite components and establishing launch dates with its launch provider.

9. Section 25.117(e) of the Commission's Rules requires that any application for modification of authorization to extend a construction completion date or a launch date shall

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<sup>9</sup> See 47 C.F.R. § 25.117(d).

<sup>10</sup> See *EarthWatch Modification Order* ¶ 14.

<sup>11</sup> See 47 C.F.R. § 2.106; Footnote US90.

<sup>12</sup> See EarthWatch Request at 1-2.

be filed on FCC Form 701 (Application for Additional Time to Construct).<sup>13</sup> The application must include a verified statement from the applicant (1) that additional time is required due to unforeseeable circumstances beyond the applicant's control, that describes these circumstances with specificity, and that justifies the precise extension period requested; or (2) that there are unique and overriding public interest concerns that justify an extension, and identifies these interests and justifies a precise extension period.<sup>14</sup>

10. Although EarthWatch's request for an extension appears to fall short of making the showing required under Section 25.117(e), we find that good cause exists to waive the application of this Rule in this case, and we grant EarthWatch's request for an extension.<sup>15</sup> No comments opposing EarthWatch's extension request were filed with the Commission. Granting the request is not likely to preclude other qualified applicants from providing remote-sensing satellite service because EarthWatch's system is comprised of only two earth stations, and its uplink TT&C transmissions for its two additional satellites will be conducted on a secondary basis. EarthWatch has commenced construction of both satellites, is in compliance with the terms of its authorization and assures us that this extension will enable it to complete construction and launch of both satellites in the time period requested.<sup>16</sup> Because this modification enables EarthWatch to complete the construction and launch of a remote-sensing satellite system with significantly improved ground image resolution capability, granting the company's request is likely to promote competition in the market for satellite imagery data.<sup>17</sup> Further, given the early stages of development of the United States commercial remote sensing industry, we believe a more lenient approach to EarthWatch's request is appropriate under these circumstances. For these reasons, we waive the application of Section 25.117(e) and grant EarthWatch's extension request.

#### IV. Conclusion

11. Granting EarthWatch's application to modify its authorization to increase the bandwidth of its uplink TT&C channel and to extend the construction completion and launch milestone dates for the two satellites authorized in the *EarthWatch Modification Order* serves the

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<sup>13</sup> See 47 C.F.R. § 25.117(e).

<sup>14</sup> *Id.*

<sup>15</sup> See 47 C.F.R. § 1.3 (any provision of the rules may be waived by the Commission on its own motion if good cause is therefor shown).

<sup>16</sup> See EarthWatch Request at 2.

<sup>17</sup> See *EarthWatch Modification Order* ¶ 17.

public interest.

### V. Ordering Clauses

12. Accordingly, IT IS ORDERED that, subject to the conditions set forth in this Order, Application File No. 85-SAT-ML-97 IS GRANTED and EarthWatch IS AUTHORIZED (a) to operate a 300 kHz channel at each of the 2985.6875 MHz and 2094.896 MHz center frequencies for telemetry, tracking and command purposes and (b) to extend to June, 2000 and August, 2000, respectively, the construction completion and launch milestones, for its two additional LEO satellites authorized in the *EarthWatch Modification Order*.

13. IT IS FURTHER ORDERED that, unless extended by the Commission for good cause shown, this authorization will become null and void in the event the space stations are not constructed and launched in accordance with this authorization by the following dates:

|                | <u>Complete Construction</u> | <u>Launch</u> |
|----------------|------------------------------|---------------|
| Two Satellites | June, 2000                   | August, 2000  |

14. IT IS FURTHER ORDERED that the temporary assignment of any particular frequencies to EarthWatch is subject to change by summary order of the Commission on 30 days' notice and does not confer any permanent right to use the spectrum. Neither this authorization nor any right granted by this authorization, 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 upon application to the Commission and upon a finding by the Commission that the public interest, convenience and necessity will be served thereby.

15. IT IS FURTHER ORDERED that EarthWatch is afforded 30 days from the date of release of this Order to decline this authorization as conditioned. Failure to respond within that period will constitute acceptance of the authorization as conditioned.

16. IT IS FURTHER ORDERED that this Order is issued pursuant to Section 0.261 of the Commission's Rules on Delegations of Authority, 47 C.F.R. § 0.261.

17. IT IS FURTHER ORDERED that this Order is effective upon the date of its release.

18. IT IS FURTHER ORDERED that, except as modified by this Order, our

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*August 1995 Order and the EarthWatch Modification Order remain in full force and effect.*

FEDERAL COMMUNICATIONS COMMISSION

  
Regina M. Keeney  
Chief, International Bureau