

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

In the Matter of	
Directsat Corporation	File No. 808SR0001
Notice of Apparent Liability	

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Adopted: June 5, 1998

Released: June 8, 1998

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

1. This action constitutes a Notice of Apparent Liability for Forfeiture, pursuant to Section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b) and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, against Directsat Corporation (Directsat) for forfeiture in the amount of twenty thousand dollars (\$20,000). For the reasons set forth below, we find that Directsat apparently is operating its satellite, EchoStar 2, at a location other than its authorized location in violation of Directsat's authorizations.

2. Directsat is the licensee of EchoStar 2,¹ a Direct Broadcast Satellite Service (DBS) satellite.² On September 9, 1996, Directsat was authorized to launch its EchoStar 2 satellite to the 118.8° W.L. orbital location, and on November 26, 1996, Directsat was licensed to begin operations.³ On March 27, 1998, TEMPO Satellite Inc., (TEMPO) alleged that Directsat was operating its satellite outside of its licensed orbit.⁴ Pursuant to the terms of its launch and

¹ This satellite was originally named Directsat 1 and is now referred to as EchoStar 2.

² Directsat Corporation is a subsidiary of EchoStar Satellite Corporation.

³ See *Directsat Corporation*, 11 FCC Rcd 10575 (1996) (granting authorization to launch); Directsat Direct Broadcast Facility License, DA 96-1982 (issued Nov. 26, 1996) (granting authorization to operate at 118.8° W.L.).

⁴ See Supplemental Filing of TEMPO Satellite Inc., filed March 27, 1998 (filed as a supplement to TEMPO's opposition to EchoStar Satellite Corporation, Directsat Corporation and EchoStar DBS's Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations. Launch and Operation Authority filed Dec. 30, 1997). TEMPO is also licensed to operate a DBS

operational authorizations, Directsat is required to operate EchoStar 2 within plus or minus 0.05 degrees of 118.8° W.L.⁵ Following TEMPO's allegation, Directsat initiated an investigation into the allegation and found that its EchoStar 2 satellite "[h]as not been maintained at the correct location."⁶ Directsat states that its Telemetry, Tracking and Control (TT&C) provider, Loral Skynet, placed the EchoStar 2 satellite into the 119.05° W.L. orbital location when the EchoStar 2 satellite was launched⁷ and that on April 2, 1998, the EchoStar 2 was actually operating at 119.00791237° W.L.⁸ Since this location is more than 0.2° degrees from its assigned orbital location, DirectSat is apparently violating the terms and conditions of its license.

3. In its *Forfeiture Policy Report and Order*,⁹ the Commission stated that, "[w]ith respect to operating on an unauthorized frequency or unauthorized location, we note that frequency and location are very important to our spectrum management and interference prevention functions."¹⁰ By Directsat's own admission, EchoStar 2 is operating more than 0.2 degrees from its assigned 118° W.L. orbit location. As the satellite licensee, Directsat may delegate TT&C functions to another entity however, Directsat remains ultimately responsible for all operations of its satellite.¹¹ Operating its satellite at a location other than the assigned

satellite at 118.8° W.L. See *TEMPO Satellite, Inc.*, DA 97-355 (rel. Feb. 24, 1997).

⁵ See Response to Supplemental Filing (filed by EchoStar Satellite Corporation, Directsat Corporation and EchoStar DBS Corporation April 15, 1998) (Reply to Supplemental Filing) at note 6.

⁶ See Response to Supplemental Filing at 5.

⁷ In its Response to Supplemental Filing, Directsat states that this positioning was done so that EchoStar 2, and another satellite, EchoStar 1 were within the 0.2 degree beamwidth of the two C-band antennas used by Loral Skynet to track the satellites. See Reply to Supplemental Response at 6-7.

⁸ See Response to Supplemental Filing at 4.

⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997) (*Forfeiture Statement Report and Order*).

¹⁰ *Forfeiture Statement Report and Order* at ¶ 47.

¹¹ See *Domestic Fixed-Satellite Transponder Sales* 90 FCC 2nd 1238, 1257 (1982) (stating that to effectively execute the Commission's regulatory mission of ensuring efficient use of the radio spectrum, persons licensed under Title III are responsible for the operation of the satellite). We also note that Directsat accepts full responsibility for the location of its satellites. See Letter to Magalie Salas, Secretary, Federal Communications Commission from David K. Moskowitz, Senior Vice President and General Counsel for EchoStar Satellite Corporation and Directsat Corporation filed May 5, 1998.

location is a serious violation of Directsat's license conditions and runs afoul of our spectrum management policies.

4. To provide guidance on forfeiture amounts, the Commission divides licensees and applicants into three general categories and sets maximum forfeiture amounts in each category.¹² Directsat is in the category of "all others" which has a "per-day/per-violation" forfeiture amount ceiling of \$11,000 and a "continuing violation" ceiling amount of \$82,500.¹³ To provide additional guidance on forfeiture amounts, the Commission has adopted non-binding base forfeiture amounts for particular violations.¹⁴ The base forfeiture amount for operating at an unauthorized location is \$4,000.¹⁵ The Commission can increase the forfeiture amount to the appropriate ceiling or decrease the forfeiture amount from the suggested base amount after considering such factors as: egregious misconduct, ability to pay, intentional violation, prior violation of same or other requirements, good faith or voluntary disclosure, history of overall compliance, and other matters as justice may require.¹⁶

5. We find that a forfeiture amount of \$20,000, the maximum forfeiture amount the International Bureau can impose under delegated authority, is warranted.¹⁷ This forfeiture amount, increased from the base amount, is justified due to Directsat's degree of misconduct, lack of voluntary disclosure and continuing violation of the rules. Specifically: 1) Directsat operated the EchoStar 2 satellite more than 0.2 degrees from its authorized location; 2) EchoStar 2's actual location was first brought to the Commission's attention by TEMPO, not EchoStar;¹⁸ 3) despite acknowledging the unauthorized location of EchoStar 2, Directsat has not relocated the offending EchoStar 2 satellite and continues to operate EchoStar 2 in violation of its license and our rules.

¹² 47 C.F.R. §1.80(b).

¹³ 47 C.F.R. §1.80(b)(3).

¹⁴ See *Forfeiture Statement Report and Order* at ¶ 22.

¹⁵ 47 C.F.R. § 1.80(b)(4) note Section I.

¹⁶ *Forfeiture Policy Statement* at ¶ 27; 47 C.F.R. §1.80

¹⁷ See 47 C.F.R. §0.261(b)(6).

¹⁸ See Supplemental Filing of TEMPO Satellite Inc., filed March 27, 1998. (TEMPO Supplement).

6. In addition to assessing a forfeiture, we require Directsat to relocate the EchoStar 2 satellite. However, in light of recent pleadings submitted by Directsat¹⁹ and TEMPO²⁰ we will not require Directsat to relocate the EchoStar 2 satellite to its originally authorized location of 118.8° W.L. In their pleadings Directsat and TEMPO both requested that the EchoStar 2 satellite be located at 119.05° W.L. The parties state that this location is preferable because it reduces the risk of collision and the possibility of increased harmful interference.²¹ Consequently, we will require Directsat to move its EchoStar 2 satellite to the 119.05° W.L. orbit location within 10 days of the release of this order.²²

7. THEREFORE, pursuant to Sections 0.261 and 1.80 of the Commission's rules, 47 C.F.R. §§ 0.261 and 1.80, and Section 503(b) of the Communications Act, as amended, 47 U.S.C. § 503(b), Directsat Corporation IS NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of twenty thousand dollars (\$20,000) for operating its EchoStar 2 satellite at an unauthorized orbital location in violation of the terms and conditions of its license.

8. Further, IT IS ORDERED that Directsat Corporation RELOCATE its EchoStar 2 satellite to 119.05° W.L. within FIVE DAYS of release of this order AND NOTIFY the Commission within THREE DAYS of the relocation of EchoStar 2, or face the possibility of an additional forfeiture under Section 503 of the Communications Act of 1934, as amended.

9. Payment of the forfeiture may be made by credit card through the Commission's Billing and Collections Branch at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the file number of these proceeding (File No. 808SR0001). Alternatively, Directsat may choose to submit a written statement seeking reduction or cancellation of the proposed monetary forfeiture. Directsat should make payment or submit a statement within 30 days of the release of this order.

¹⁹ Consolidated Emergency Alternative request for Special Temporary Authority (filed May 5, 1998) (Alternative STA).

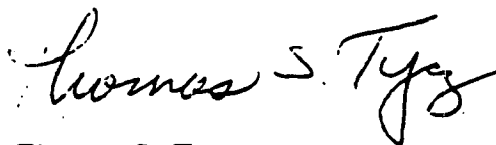
²⁰ Comments of TEMPO Satellite Inc., (filed May 15, 1998).

²¹ See TEMPO Supplement at 7 (supporting EchoStar 2 remaining at 119.05° W.L.); EchoStar Alternative STA at 4 (agreeing that relocation of EchoStar 2 would be imprudent due to increased risk of collision).

²² We will fully address the relocation of the EchoStar 2 satellite and Directsat's alternative STA request in a separate order.

10. Copies of this Notice are being sent, by certified mail -- return receipt requested, to Directsat's counsel, Philip Malet, Pantelis Michalopoulos, and Michael Nilsson, Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036, and David K. Moskovitz, Senior Vice President and General Counsel, EchoStar Communications Corporation, 5701 South Santa Fe, Littleton, Co. 80120.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Thomas S. Tycz". The signature is written in a cursive, flowing style.

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