

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

In the Matter of)
EchoStar Satellite Operating Corporation)
Applications to Modify Authority to Operate) IBFS File No. SAT-MOD-20120301-00033
Direct Broadcast Satellite Service Space Stations) Call Sign S2741
EchoStar 3, EchoStar 12, and EchoStar 15) IBFS File No. SAT-MOD-20120301-00034
on Channels 3 through 32 at the 61.5° W.L.) Call Sign S2653
Orbital Location) IBFS File No. SAT-MOD-20120301-00035
) Call Sign S2811
)
Applications for Special Temporary Authority) IBFS File No. SAT-STA-20120301-00030
to Operate Direct Broadcast Satellite Service) Call Sign 2741
Space Stations EchoStar 3, EchoStar 12,) IBFS File No. SAT-STA-20120301-00031
EchoStar 15, and EchoStar 16 on Channels 1 and 2) Call Sign S2653
at the 61.5° W.L. Orbital Location) IBFS File No. SAT-STA-20120301-00032
) Call Sign S2811
) IBFS File No. SAT-STA-20110902-00171
) Call Sign S2844

ORDER AND AUTHORIZATION

Adopted: June 22, 2012

Released: June 22, 2012

By the Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. With this Order, we grant EchoStar Satellite Operating Corporation's (EchoStar's) request to modify the authorizations for the EchoStar 3, EchoStar 12, and EchoStar 15 Direct Broadcast Satellite (DBS) service space stations to change the authorized channels on each space station from DBS channels 1-22 and 25-32 to DBS channels 3 through 32, at the 61.5° W.L. orbital location.1 In addition, we grant EchoStar special temporary authority (STA) to operate all three space stations, and the recently authorized EchoStar 16 space station, for a period of 180 days on the two now unassigned DBS channels at the 61.5° W.L. orbital location, which are channels 1 and 2, subject to conditions. Both actions granted in this Order are effective upon the EchoStar 16 space station beginning operations at the 61.5° W.L. orbital location.

1 The authorized station-keeping box for the EchoStar 3 satellite is centered at the 61.8° W.L. orbital location. See IBFS File No. SAT-STA-20120424-00073. The authorized station-keeping box for the EchoStar 12 satellite is centered at the 61.35° W.L. orbital location. See IBFS File No. SAT-STA-20100203-00021. The authorized station-keeping box for the EchoStar 15 satellite is centered at the 61.65° orbital location. See IBFS File No SAT-STA-20120531-00091. For ease of reference in this order, we generally refer to all the above as the 61.5° W.L. orbital location, unless the precise location of the station-keeping box is pertinent to the discussion.

II. BACKGROUND

2. Since 2007, EchoStar has held regular authority to operate DBS space stations at the 61.5° W.L. orbital location on thirty of the thirty-two DBS channels at that location. Specifically, EchoStar has authority to operate on DBS channels 1-22 and 25-32.² The other two channels at this location, channels 23 and 24, are unassigned. Currently, EchoStar operates three co-located space stations -- EchoStar 3, EchoStar 12, and EchoStar 15 – at authorized orbital locations slightly offset from the 61.5° W.L. orbital location.

3. In 2010, the Commission granted EchoStar special temporary authority to operate the EchoStar 15 space station on unassigned channels 23 and 24.³ The STA includes several conditions relating to the fact that the channels are not yet regularly assigned to any licensee. One of the conditions requires EchoStar to notify its customers that EchoStar is providing service on these channels pursuant to special temporary authority, and is required to terminate operations when the satellite regularly assigned to those channels is launched. The other condition limits the programming EchoStar can provide to “free-standing separate programming packages that are not required as a condition of purchasing any other programming packages and that are readily capable of being withdrawn on short notice.”⁴ This condition prohibits EchoStar from providing any programming that customers may expect to be provided on a continuing basis. At the same time, it allows EchoStar to provide stand-alone, single broadcasts, such as pay-per-view.

4. In September 2011, EchoStar requested authority to construct, launch and operate the EchoStar 16 space station. In that application, EchoStar requested a “swap” of its thirty authorized channels at the 61.5° W.L. orbital location. Specifically, EchoStar sought authority to operate the EchoStar 16 space station on channels 3-32, instead of channels 1-22 and 25-32. At the same time, EchoStar requested an STA to operate the EchoStar 16 space station, once in-orbit, on the two newly unassigned channels, channels 1 and 2. Subsequently, in March 2012, EchoStar filed applications to modify the licenses for EchoStar 3, EchoStar 12, and EchoStar 15, by authorizing it to operate all three space stations on channels 3-32, instead of channels 1-22 and 25-32. Similarly, EchoStar filed a request for STA to operate these three in-orbit space stations on unassigned channels 1 and 2. EchoStar asked

² Channels 2-22 (even) were licensed to DBSC, EchoStar’s predecessor-in-interest. Application of Direct Broadcasting Satellite Corp., *Memorandum Opinion and Order*, 8 FCC Rcd. 7959 (1993); Application of Direct Broadcasting Satellite Corp. for Assignment of Direct Broadcast Satellite Orbital Positions and Channels, *Order*, 11 FCC Rcd. 10494 (1996). Channels 1-21 (odd) were assigned to EchoStar by Rainbow DBS. See Rainbow DBS Company LLC, Assignor, and EchoStar Satellite L.L.C., Assignee, Consolidated Application for Consent to Assignment of Space Station and Earth Station Licenses, and related special Temporary Authorization, *Memorandum Opinion and Order*, 20 FCC Rcd 16868, 26882 para. 33 (2005) (operating authority for 11 DBS channels on EchoStar 12, formerly named Rainbow 1, was assigned from Rainbow DBS to EchoStar, together with special temporary authority to operate on channels 23 and 24). Authority for contiguous channels 25-32 was assigned from Dominion Video Satellite, Inc. to EchoStar in 2007. See Policy Branch Information, Actions Taken, *Public Notice*, Report No. SAT-00474, DA No. 07-4164 (Oct. 5, 2007) (IBFS File No. SAT-ASG-20070608-00081).

³ EchoStar Satellite Operating Corporation Application for Special Temporary Authority to Operate the EchoStar 15 Satellite on Channels 23 and 24 at the 61.55° W.L. Orbital Location, *Order and Authorization*, 25 FCC Rcd 10980 (Int’l Bur. Sat Div. 2010). The STA to operate EchoStar 15 on channels 23 and 24 has subsequently been extended. See also IBFS File No. SAT-STA-20120227-00023 (the most recent grant of STA for a period of 180 days (granted April 18, 2012)).

⁴ *Rainbow STA Order*, 18 FCC Rcd at 19828 ¶ 9.

that the date of any grant be the date on which EchoStar 16 begins to operate at the 61.5° W.L. orbital location. The applications were placed on public notice on March 23, 2012.⁵ No comments were filed.

5. Concurrent with this Order, the Satellite Division is granting EchoStar authority to construct, launch and operate the EchoStar 16 space station, with a station-keeping box centered precisely at the 61.5° W.L. orbital location.⁶

III. DISCUSSION

6. We grant EchoStar's unopposed request to consolidate its thirty regularly-licensed channels at the 61.5° W.L. orbital location into a single block from channel 3 to channel 32. To date, EchoStar's authorization has been split into two blocks of channels divided by the unassigned channels 23 and 24. Consolidating the two blocks by moving the unassigned channels to channels 1 and 2 at the lower end of the band of channels efficiently uses spectrum capacity in two respects. First, consolidating all regularly-authorized channels will permit EchoStar to optimize use of spot beams on channels 18 through 32.⁷ Second, any new operator that might be authorized in the future to operate on the unassigned channels at the 61.5° W.L. orbital location would have EchoStar operating on adjacent channels on just one side of it, rather than on both sides. As a consequence, the new operator and EchoStar could more easily resolve any potential interference concerns.

7. Moving the unassigned channels at the 61.5° W.L. orbital location from channels 23 and 24 to channels 1 and 2 is not prohibited by the current freeze on new DBS applications because EchoStar does not request additional frequencies or orbital locations.⁸ EchoStar is still authorized to operate on thirty channels at the 61.5° W.L. orbital location, and two channels remain unassigned at that location.⁹

8. We also grant EchoStar's request for special temporary authority to operate the EchoStar 3, EchoStar 12, EchoStar 15, and EchoStar 16 space stations on unassigned channels 1 and 2 at the 61.5° W.L. orbital location. Since 1998, when the Bureau first authorized EchoStar's predecessor-in-interest to use the unassigned channels at the location, we have consistently found it in the public interest to make efficient use of the available spectrum by allowing operation on these unassigned channels under STA. The Bureau, however, has imposed certain conditions to reflect and preserve the unassigned nature of the channels, and to avoid customer confusion or disruption.¹⁰ We do so again today. Consequently, we

⁵ Policy Branch Information, Satellite Space Applications Accepted for Filing, *Public Notice*, Report No. SAT-00853 (rel. March 23, 2012).

⁶ See IBFS File No. SAT-LOA-20110902-00172 (granted June 22, 2012).

⁷ See IBFS File No. SAT-LOA-20110902-00172, Narrative at 4, Attachment A at 3; IBFS File No. SAT-MOD-20120301-00033, Narrative at 3, n.6.

⁸ Direct Broadcast Satellite (DBS) Service Auction Nullified: Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications, *Public Notice*, FCC 05-213, 20 FCC Rcd 20618 (2005).

⁹ See Application of United States Satellite Broadcasting Company, Inc. for Modification of Construction permit for Direct Broadcast Satellite System, *Memorandum Opinion and Order*, 5 FCC Rcd 7576 (1990) (authorizing modification of authorization to substitute equal number of DBS channels at another orbital location); see also EchoStar Satellite L.L.C. Application for Authority to Modify its Direct Broadcast Satellite Authorization, *Memorandum Opinion and Order*, 19 FCC Rcd 6075 (Int'l Bur. Sat. Div. 2004) (authorizing substitution of two channels at the same orbital location).

¹⁰ For more information regarding operations on the unassigned channels under special temporary authority see: Direct Broadcasting Satellite Corporation Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 1-21 (Odd) and 23-32 (Odd and Even) at 61.5° W.L., *Memorandum Opinion and Order*, 13 FCC Rcd 6392, 6395 ¶9 (Int'l Bur. Sat. Div. 1998); EchoStar Satellite Corporation, Application for Renewal of Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the

grant EchoStar's requests for STAs to operate all its space stations at the 61.5° orbital location on unassigned channels 1 and 2, subject to the same customer notification and programming limitation conditions placed on previous grants of special temporary authority.

IV. CONCLUSION AND ORDERING CLAUSES

9. For the foregoing reasons, we find that the public interest is served by granting EchoStar regular authority to operate its DBS space stations, EchoStar 3, EchoStar 12, and EchoStar 15, on DBS channels 3 through 32 at the 61.5° W.L. orbital location, subject to the conditions imposed herein.

10. Accordingly, IT IS ORDERED that EchoStar Satellite Operating Corporation's applications for modification of authority for EchoStar 3, EchoStar 12, and EchoStar 15, IBFS File Nos. SAT-MOD-20120301-00033, SAT-MOD-20120301-00034, and SAT-MOD-20120301-00035, ARE GRANTED. DBS space stations EchoStar 3, EchoStar 12, and EchoStar 15 ARE AUTHORIZED to operate on DBS channels 3-32, effective upon receipt of written notification to the Chief, Satellite Division, International Bureau, Federal Communications Commission, that the EchoStar-16 satellite has commenced operations at the 61.5° W.L. orbital location.

11. IT IS FURTHER ORDERED that EchoStar Satellite Operating Corporation's applications for special temporary authority to operate the EchoStar 3, EchoStar 12, EchoStar 15, and EchoStar 16 space stations on DBS Channels 1 and 2, IBFS File Nos. SAT-STA-20120301-00030, SAT-STA-20120301-00031, SAT-STA-20120301-00032, and SAT-STA-20110902-00171, ARE GRANTED. EchoStar Satellite Operating Corporation may provide service pursuant to these Special Temporary Authorizations for 180 days, effective upon receipt of written notification to the Chief, Satellite Division, International Bureau, Federal Communications Commission, that the EchoStar 16 satellite has commenced operations at the 61.5° W.L. orbital location and subject to the following terms and conditions:

- a. that EchoStar Satellite Operating Corporation's use of channels 1 and 2 at the 61.5° W.L. orbital location shall cause no harmful interference to any other lawfully operating radio station and EchoStar Satellite Operating Corporation shall cease operation on those channels immediately upon notification of such interference.
- b. that EchoStar Satellite Operating Corporation shall not claim protection from interference from any other lawfully operated radio station with respect to its operations on channels 1 and 2 and that EchoStar Satellite Operating Corporation's operation on channels 1 and 2 is at its own risk.
- c. EchoStar Satellite Operating Corporation:
 - 1) must inform its customers, in writing, that services using the two unassigned channels at the 61.5° W.L. orbital location will be discontinued upon the termination of EchoStar's temporary authority to operate on these channels;

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61.5° W.L. Orbital Location, and Rainbow DBS Company L.L.C., Application for Special Temporary Authority to Operate a Direct Broadcast Satellite Over Channels 23 and 24 at the 61.5° W.L. Orbital Location, *Order and Authorization*, 18 FCC Rcd 19825, 19828 ¶ 9 (Int'l Bur. 2003); EchoStar Satellite Operating Corporation Application for Extension and Modification of Special Temporary Authority to Operate Direct Broadcast Satellite Service over Channels 23 and 24 at the 61.5° W.L. Orbital Location, *Order and Authorization*, 22 FCC Rcd 2223, 2224-25 ¶¶ 6-7 (Int'l Bur. 2007); EchoStar Corporation Application for Special Temporary Authority to Operate the EchoStar 15 Satellite on Channels 23 and 24 at the 61.55° W.L. Orbital Location, *Order and Authorization*, 25 FCC Rcd 10980, 10982 ¶ 8 (Int'l Bur. Sat. Div. 2010).

- 2) must provide the following language to its customers in its monthly billing statements:

“The [name of module(s)] is only temporarily available. Dish Network will discontinue these services upon the termination of Dish Network’s temporary authority to operate on these channels. Therefore, [name of module] will cease to be available to you upon the termination of Dish Network’s temporary authority to operate on these channels without prior notice. If you have any questions, please call us toll-free at [insert telephone number].”
 - 3) must include in all marketing notification that service using the two unassigned channels is being provided on a temporary basis and may be diminished or discontinued at any time. Any failure to comply with customer notification procedures will be subject to enforcement action.
- d. EchoStar Satellite Operating Corporation may use channels 1 and 2 at the 61.5° W.L. orbital location only for free-standing separate programming packages that are not required as a condition of purchasing any other programming packages and that are readily capable of being withdrawn on short notice. Consumers should not have any expectation that the packages that they are purchasing include additional programming provided over channels 1 and 2. Any failure to comply with this programming requirement will be subject to enforcement action.
 - e. EchoStar Satellite Operating Corporation shall cease operations on channels 1 and 2 at the 61.5° W.L. orbital location upon the launch and operation of a satellite regularly licensed to operate on these channels at this location.
 - f. Each grant of Special Temporary Authorization is conditioned on the outcome of any rules adopted in the Notice of Proposed Rulemaking Proceeding in IB Docket 06-160 (DBS License Processing Procedures Rulemaking).
 - g. Each grant of Special Temporary Authorization is conditioned on the outcome of the Commission decision on the petition for reconsideration of eligibility restrictions for unassigned channels at the 61.5° W.L. orbital location.

12. EchoStar Satellite Operating Corporation is afforded thirty days from the date of release of this Order to decline the authorizations granted as conditioned. Failure to respond within that period will constitute formal acceptance of the authorizations as conditioned.

13. This action is taken pursuant to Section 309 of the Communications Act, 47 U.S.C. § 309, and Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Robert G. Nelson
Chief
Satellite Division, International Bureau