

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

In the Matter of	)	
	)	
EchoStar Satellite Corporation	)	RM No. 10767
	)	(Terminated)
Petition for Rulemaking to Redesignate the 28.6-	)	
29.1 GHz (Earth-to-space) and 18.8-19.3 GHz	)	
(space-to-Earth) Bands to Allow Geostationary	)	
Fixed-Satellite Service Operations on a Co-	)	
primary Basis	)	

**ORDER**

**Adopted: December 8, 2014**

**Released: December 8, 2014**

By the Chief, International Bureau:

**I. INTRODUCTION**

1. By this *Order*, we deny a Petition for Rulemaking filed by EchoStar Satellite Corporation (EchoStar) and terminate the above captioned proceeding. In its Petition, EchoStar requests that the Commission modify its Ka-band Plan to permit geostationary satellite orbit (GSO) Fixed Satellite Service (FSS) operations on a co-primary basis in certain frequency bands currently designated for non-geostationary satellite orbit (NGSO) FSS.<sup>1</sup> In particular, EchoStar's Petition addresses the 28.6-29.1 GHz and 18.8-19.3 GHz frequency bands that are designated for NGSO FSS operations on a primary basis. EchoStar asserted in its Petition that unless the Commission adopts a co-primary designation for GSO FSS in the NGSO FSS frequency bands, the spectrum will be unused or underused. As set forth below, based on developments since the Petition was filed, we conclude that EchoStar's proposal does not merit further consideration at this time. Consequently, we deny EchoStar's Petition.

**II. BACKGROUND**

2. In 1996, the Commission developed a band segmentation plan for the 28 GHz band designed to accommodate both terrestrial and satellite communication systems.<sup>2</sup> This plan designates discrete spectrum bands for specific types of systems, including Local Multipoint Distribution Service, FSS, and feeder links for certain Mobile Satellite Service systems.<sup>3</sup> The Commission also adopted

<sup>1</sup> For purposes of this order, the term "Ka-band" refers to space-to-Earth (downlink) communications in the 17.7-20.2 GHz band and corresponding Earth-to-space (uplink) communications in the 27.5-30.0 GHz frequency band. The Ka-band Plan was developed in a series of Orders, beginning in CC Docket No. 92-297. The *Ka-band Report and Order* established an allocation plan for use of the Ka-band by non-Federal users. *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, First Report and Order and Fourth Notice of Proposed Rulemaking, 11 FCC Rcd 19005 (1996) (*Ka-band Report and Order*), modified by 12 FCC Rcd 22310 (1997).

<sup>2</sup> *Ka-band Report and Order*, 11 FCC Rcd 19005 (1996).

<sup>3</sup> *Id.* at 19007.

discrete designations for NGSO FSS systems and GSO FSS systems, while adopting shared designations for other services. In the 28.35-28.6 GHz and 29.5-30.0 GHz band segments (Earth-to-space), GSO FSS systems have operating priority over NGSO FSS systems. In the 28.6-29.1 GHz band segment (Earth-to-space), NGSO FSS systems have operating priority over GSO FSS systems, which operate on a secondary status in the band.<sup>4</sup> In a separate proceeding, the Commission adopted rules involving the space-to-Earth allocation for various services in the 18 GHz band.<sup>5</sup> For FSS, the Commission designated the 18.58-18.8 GHz frequency band for exclusive GSO FSS use, and the 18.8-19.3 GHz frequency band for exclusive NGSO FSS use.<sup>6</sup>

3. In 2003, EchoStar filed a Petition for Rulemaking to revise the Ka-band Plan and the Table of Allocations to allow GSO FSS systems to operate on a co-primary basis in 28.6-29.1 GHz and 18.8-19.3 GHz frequency bands currently designated for NGSO FSS use on a primary or exclusive basis. EchoStar's Petition was placed on public notice.<sup>7</sup> SES AMERICOM, Inc. and Hughes Electronics Corporation and Hughes Network Systems, Inc. (Hughes) filed comments in support of the Petition for the reasons stated by EchoStar -- that the spectrum is lying fallow and co-primary use could lead to the introduction of additional and innovative services.<sup>8</sup> Northrop Grumman Space Technology and Mission Systems Corporation (Northrop) opposed a rulemaking proceeding. Northrop disputes EchoStar's technical assertions that co-primary operations are possible and states that EchoStar failed to demonstrate a lack of orbital resources or spectrum for GSO industry needs.<sup>9</sup> Space Exploration Technologies LLC filed reply comments also opposing EchoStar's Petition, stating that coordination requirements between GSO and NGSO systems would be a burden on NGSO systems.<sup>10</sup>

### III. DISCUSSION AND CONCLUSION

4. At the time EchoStar filed its Petition, the only U.S. NGSO FSS Ka-band licensee, Teledesic, had recently surrendered its license. In addition, other NGSO FSS Ka-band applicants had withdrawn their applications. Thus, it was unclear if any parties were taking concrete steps to launch an NGSO FSS Ka-band system.<sup>11</sup> Based on these circumstances, EchoStar asserted that NGSO FSS

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<sup>4</sup> *Id.* at 19024.

<sup>5</sup> *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use*, Report and Order, IB Docket No. 98-172, 15 FCC Rcd 13430 (2000).

<sup>6</sup> Note NG165 was added to the Table of Allocations to limit FSS operations within the 18.8-19.3 GHz band to NGSO systems exclusively: "[t]he use of the band 18.8-19.3 GHz by the fixed-satellite service (space-to-Earth) is limited to systems in non-geostationary-satellite orbits." 47 C.F.R. § 2.106, Note NG165. Non-Federal systems operating in the 18.8-19.3 GHz band must be coordinated with Federal systems operating in this band. 47 C.F.R. § 2.106, US334.

<sup>7</sup> Public Notice, Consumer and Governmental Affairs Bureau, Report No. 2628 (Sept. 25, 2003).

<sup>8</sup> Comments of SES Americom, RM 10767 at 1, 4 (filed Oct. 27, 2003) and Hughes Electronics and Hughes Network Systems, Inc. RM-10767 at 2, 3.

<sup>9</sup> Comments of Northrop Grumman Space Technologies & Mission Systems Corp., RM 10767 at 4, 13-14.

<sup>10</sup> Comments of Space Exploration Technologies, RM-10767 at 6.

<sup>11</sup> AtContact Communications (formerly contactMEO Communications) and Northrop Grumman Space & Mission Systems Corporation were authorized to operate Ka-band satellite systems including both NGSO FSS and GSO FSS space stations, in 2006 and 2009 respectively. See *contactMEO Communications, LLC*, Order and Authorization, 21 FCC Rcd 4035 (Int'l Bur. 2006) and *Northrop Grumman Space & Mission Systems Corp.*, Order and Authorization, 24 FCC Rcd 2330 (Int'l Bur. 2009). Neither of these systems was implemented. See Public Notice, Policy Branch Information, Report No. SAT-00594 (Apr. 3, 2009) (Northrop Grumman surrender of authorizations), and

(continued....)

spectrum was not likely to be used. Subsequently, however, the United Kingdom authorized O3b Limited to operate an NGSO FSS Ka-band system.<sup>12</sup> O3b launched its first set of four satellites in 2013 and its second set of four satellites in July 2014. The Commission has authorized O3b to operate a number of earth stations in the United States to communicate with the O3b system.<sup>13</sup> The deployment of O3b's NGSO FSS system removes the factual premise for EchoStar's Petition. Section 1.407 of the rules states that petitions for rulemaking that do not disclose sufficient reasons to justify the institution of a rulemaking proceeding will be denied.<sup>14</sup> We conclude that EchoStar's Petition does not disclose sufficient reasons to justify institution of a rulemaking proceeding.

#### IV. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED, that pursuant to Sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), and Section 1.407 of the Commission's rules, 47 C.F.R. § 1.407, the Petition for Rulemaking filed by EchoStar Satellite Corporation is DENIED and RM-10767 is TERMINATED effective upon the issuance of this Order.

6. This action is taken under delegated authority pursuant to Sections 0.51 and 0.261 of the Commission's Rules, 47 C.F.R. §§ 0.51 and 0.261.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre  
Chief, International Bureau

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*AtContact Communications, LLC*, Order, 24 FCC Rcd 10929 (Int'l Bur. 2009) (declaring authorization null and void for failure to meet implementation milestones), *affirmed on reconsideration*, 25 FCC Rcd 7567 (2010).

<sup>12</sup> See Letter to Marlene H. Dortch, Secretary, FCC, from Joseph Godless, Counsel for O3b Limited (May 7, 2013) (submitting U.K. Space Activity License) filed in IBFS File No. SES-LIC-20100723-00952.

<sup>13</sup> See, e.g., IBFS File No. SES-LIC-20130124-00089 (gateway earth station in Vernon, Texas, Call Sign E130021, granted on June 20, 2013); SES-LIC-20100723-00952 (gateway earth station in Haleiwa, Hawaii, Call Sign E100088, granted on Sept. 25, 2012); and SES-LIC-20130528-00455 (blanket earth station authorization for operations on U.S. registered maritime vessels, granted May 13, 2014).

<sup>14</sup> 47 C.F.R. § 1.407. See also *WWHT, Inc. v. FCC*, 656 F.2d 807, 818 (D.C. Cir. 1981) ("It is only in the rarest and most compelling of circumstances that this court has acted to overturn an agency judgment not to institute a rulemaking.").

APPENDIX A

List of Comments and Replies

SES Americom (Oct. 27, 2003)

Northrop Grumman Space Technology and Missions Systems Corp. (Oct. 28, 2003)

Hughes Electronics Corp. (Nov. 4, 2003)

Space Exploration Technologies Corp. (Nov. 13, 2003)

EchoStar Satellite Corp. (Nov. 13, 2003)

Northrop Grumman Space and Mission Systems Corp. (Nov. 13, 2003)

Ex Parte Presentations

EchoStar Satellite LLC (Feb. 26, 2007)