



April 30, 2015

By *ECFS*

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation
IB Docket No. 12-267

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206, EchoStar Satellite Operating Corporation and Hughes Network Systems, LLC (collectively, “EchoStar”) submit this letter to offer additional input on the following issues in the above-referenced proceeding: (i) implementing the proposed Advance Publication of Information (“API”) filing process to ensure protection of satellites in accordance with International Telecommunication Union (“ITU”) filing priority; (ii) limiting the default events triggering payment of the surety bond under the API filing process to a failure to file a complete application within the required time; (iii) allowing licensees to use existing satellites to meet FCC milestone requirements; and (iv) retaining the Commission’s two-degree spacing rules, as currently applied to all geostationary satellite orbit (“GSO”) fixed satellite service (“FSS”) frequency bands (except as otherwise provided under specific service rules).

Adopting API Filing Rules to Protect Satellites in Accordance with Their ITU Filing Priority

The Commission should implement the proposed API filing process to ensure protection of existing and planned satellites in accordance with their respective ITU filing dates. Specifically, consistent with established Commission policy and precedent,¹ satellite licenses granted under

¹ See *Telesat Canada Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List and Petition for Declaratory Ruling to Serve the U.S. Market Using Ka-band Capacity on Anik F2*, 17 FCC Rcd 25287, ¶¶ 25-26 (IB 2002) (granting U.S. market access to a Canadian-licensed satellite having ITU filing priority over a previously authorized U.S.-licensed satellite); *KaStarCom World Satellite, LLC, Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 14322, ¶ 25 (IB 2001) (conditioning grant of U.S. satellite license upon outcome of international coordination process and coordination with non-U.S. satellites having ITU filing priority).

the proposed API filing process (as well as under the existing full application process) should be conditioned expressly upon the outcome of the international coordination process, including successful coordination with affected non-U.S. satellites that have filing date priority at the ITU. By codifying its long-standing practice of conditioning licenses upon the outcome of the international coordination process, the Commission will ensure that every satellite license will be issued with the same international coordination condition, thus avoiding potential conflict, or mutual exclusivity, with later FCC license grants. This, in turn, ensures adherence to the international coordination process and ITU filing date priority without undermining the Commission's first-come, first-served approach.

Requiring Surety Bond Payment for Failure to File a Timely Complete Application

In applying a bond requirement to the API filing process, the Commission should fully consider the bond underwriting process and the practical limits on the availability of surety bonds to cover certain risks and losses. As the Surety & Fidelity Association of America ("SFAA") has noted, surety bonds may not be readily available to cover risks and losses due to events beyond an applicant's control, such as Commission denial of an application.² Consequently, EchoStar agrees with SFAA that any surety bond required under API filing process should secure only the filing of a complete application within the required time.

Allowing Use of Existing Satellites to Meet Milestone Requirements

Consistent with the overall goals of maximizing operational flexibility and easing regulatory burdens in this proceeding,³ the Commission should provide satellite operators with greater operational flexibility by allowing the use of an existing satellite to meet FCC milestone requirements for a new satellite. Specifically, such use should be permitted if the following criteria are met:

- (i) the existing satellite must be sufficiently healthy to be capable of providing the services authorized under the new license;
- (ii) the existing satellite must have sufficient fuel remaining to provide reliable service during the new license term (which will be modified to reflect the satellite's estimated end of life) and to execute end-of-life maneuvers; and
- (iii) if the existing satellite is already authorized to provide service to the United States at another orbital location, the FCC must authorize the use of another satellite at the other orbital location before the existing satellite may be brought into use to meet the milestone requirements for a new satellite.

The above criteria will serve the public interest by ensuring both productive and efficient use of existing satellites that otherwise may be unused or underutilized and continuity of existing services to the United States.

² See Letter from Robert J. Duke, SFAA, to Secretary, FCC, IB Dkt. No. 12-267, at 1 (Dec. 1, 2014).

³ See *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Further Notice of Proposed Rulemaking, 29 FCC Rcd 12116, ¶ 2 (2014) ("FNPRM").

Retaining Two-degree Spacing

EchoStar continues to support retaining the Commission’s two-degree spacing policy and rules in order to ensure spectrum efficiency, regulatory certainty, and robust competition. EchoStar further urges the Commission to revise its rules to clarify that two-degree spacing applies to all GSO FSS frequency bands (including “planned Appendix 30B” and “unplanned” bands), unless otherwise provided under specific service rules. As the *FNPRM* notes, the two-degree spacing rules apply to “GSO FSS satellites in the conventional C-band, conventional or extended Ku-band, [and] 20/30 GHz band,”⁴ regardless of whether these frequency bands are “planned” or “unplanned.” The *FNPRM* further notes that the two-degree spacing rules afford no interference protection for non-conforming (*i.e.*, non-two-degree compliant) operations from subsequently authorized, conforming operations.⁵ For more than 30 years, the Commission has successfully applied its two-degree spacing rules to maximize satellite orbital and spectral resources,⁶ and the record supports continued application and clarification of the rules to ensure a two-degree spacing environment.

Based upon the foregoing, EchoStar urges the Commission to move forward with its efforts to further streamline the Part 25 rules to allow additional operator flexibility and regulatory certainty, including adopting the proposals discussed above.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ Jennifer A. Manner
Jennifer A. Manner
Vice President, Regulatory Affairs

cc: Jose Albuquerque (FCC)
Chip Fleming (FCC)
Kerry Murray (FCC)
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⁴ *Id.* ¶ 37.

⁵ *See id.* ¶ 45.

⁶ *See Licensing of Space Stations in the Domestic Fixed Satellite Service and Related Revisions of Part 25 of the Rules and Regulations*, Report and Order, 54 RR2d 577, ¶¶ 2-4 (1983); *Amendment to the Commission’s Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, Report and Order, 11 FCC Rcd 2429 (1996); *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, ¶ 119 (2003).