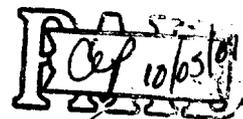


FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

August 28, 2001

OFFICE OF  
MANAGING DIRECTOR

Pantelis Michalopoulos, Esquire  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036



86-285

RE: Request for Reduction of Regulatory Fee for Fiscal Year (FY) 1999; EchoStar Satellite Corporation, Call Signs DBS-88-01, DBS-88-02, and DBS-88-08, Fee Control Numbers 9909238835221001, 9909238835221002, 9909238835221003.

Dear Mr. Michalopoulos:

We reviewed your request dated September 21, 1999 that the Commission reduce the Fiscal Year (FY) 1999 regulatory fee owed for a Direct Broadcast Satellite, call sign DBS-88-02 (also referred to as EchoStar 2). As explained below, your request for a pro-rated fee is denied, and the underpayment, \$76,154.16, is due within 30 days of this decision.

EchoStar Satellite Corporation (ESC) requested that the Commission reduce the annual fee due for satellite call sign DBS-88-02 (also referred to as EchoStar 2), which was licensed to Directsat Corporation (DST) until February 25, 1999. Thereafter, DST merged with ESC and both satellites were licensed by ESC. You believe the Commission should permit a reduction in the fee under the authority of 47 U.S.C. § 159(d) on the ground that DBS-88-01 (EchoStar 1) and DBS-88-02 (EchoStar 2) are technically identical and under our procedures technically identical satellites are counted as one.

Although you say that EchoStar 1 and EchoStar 2 are "technically identical geostationary satellites co-located at the same orbital location," and that both were licensed to ESC as of February 25, 1999, payment of the FY 1999 annual regulatory fees is based on a license or authorization held on October 1, 1998. On that date, DST held the license to operate EchoStar 2, and ESC held the license to operate EchoStar 1. Although the fee was not payable until September 1999, the obligation was established at the beginning of the fiscal year. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, 14 FCC Rcd. 9868, 988 ¶ 59 (2000). Moreover, 47 C.F.R. § 1.1160(b) provides that no refunds will be issued on a *pro rata* basis or for unexpired partial years. There is no ambiguity in the application of the fee rules to this fact setting.

We construe your argument in favor of a reduction of the fee as resting on the premise that only one fee would be due and payable in subsequent years and that, therefore, it would be equitable to prorate the fee for FY 1999. We consider your assertion in the context of our narrowly drawn authority to waive, reduce or defer payment of a regulatory fee based on "good cause shown and where waiver, reduction or deferral of the fee would promote the public interest." 47 U.S.C. §

159(d). The Commission's Report & Order, Implementation of Section 9 of the Communications Act, 9 FCC Rcd 533, ¶ 29, addressed the standard required to obtain a waiver, reduction or deferral of the fee on good cause shown. At that time the Commission announced it would restrict waivers to "encompass only those requests unambiguously articulating 'extraordinary and compelling circumstances' outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee." We do not find that your request meets the standard of "unambiguously articulating 'extraordinary and compelling circumstances.'" Your request is based on a theory that equity should permit ESC to establish a time based on its own voluntary action for the assessment of the fee that is different than what was announced in the Commission's Report and Order for the FY 1999 Regulatory Fees. In summary, we find nothing extraordinary or compelling about a merger resulting in ESC holding licenses for two satellites even if they are technically identical. We are denying your request because you failed to meet the statutory basis for relief, and you are directed to pay the balance owed, \$76,154.16, within 30 days of the date of this letter.

If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark A. Reger  
Chief Financial Officer

4909238835221002  
9909238835221003

**STEPTOE & JOHNSON LLP**

PAUL

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795

Telephone 202.429.3000  
Facsimile 202.429.3902  
<http://www.steptoel.com>

Pantelis Michalopoulos  
202.429.6494  
pmichalo@steptoel.com

September 21, 1999

Mr. Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
Attention: Petitions  
Post Office Box 358835  
Pittsburgh, PA 15251-5835

RECEIVED  
SEP 21 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Office of the Managing Director  
Federal Communications Commission  
445 Twelfth Street, S.W., Room 1-A625  
Washington, D.C. 20554

**Re: Request of EchoStar Satellite Corporation for a Determination  
that a Reduced Regulatory Fee is Due and/or for a Reduction in  
the Regulatory Fee Due for Fiscal Year 1999**

Dear Mr. Fishel:

Pursuant to Section 1.1166(d) of the Commission's Rules, 47 C.F.R. § 1.1166(d), and based on guidance from the Commission staff, EchoStar Satellite Corporation ("EchoStar") hereby requests a determination that a reduced regulatory fee is due and/or a reduction in the regulatory fee due for fiscal year 1999. In summary, EchoStar seeks a determination that it may pay an annual fee for three satellites for the 5 months of fiscal year 1999 through February 25, 1999, and for two satellites for the remaining 7 months of the fiscal year, because two of EchoStar's satellites are technically identical, co-located and, as of February 25, 1999, both licensed to the same corporate entity in the EchoStar group of companies. Good cause exists for such a determination and/or for a fee reduction, and the public interest will be served by the requested action.

EchoStar operates three geostationary satellites in the Direct Broadcast Satellite ("DBS") Service that were licensed as of October 1, 1998 (EchoStar 1, 2 and 3 in Call Signs DBS-88-01, DBS-88-02 and DBS-88-08 respectively). Two of these satellites, however,

EchoStar 1 and 2 in Call Signs DBS-88-01 and DBS-88-02, are technically identical and located at the same orbital location – the nominal 119° W.L. orbital location.<sup>1</sup> Under the Commission's rules, these two satellites are deemed as one for the purpose of determining the annual fee. *See FY 1999 International and Satellite Services Regulatory Fees, Public Notice (Aug. 2, 1999) ("Fees Public Notice")* at 2 ("[m]ultiple technically identical geostationary satellites co-located at the same orbital location will be considered one station for the purpose of per-space station regulatory fee calculation."). In previous years, EchoStar had nevertheless paid for these two satellites separately, because at the time the satellites were licensed to two different companies, EchoStar Satellite Corporation and Directsat Corporation ("Directsat"). While the two companies were indirect wholly owned subsidiaries of the same corporation, EchoStar Communications Corporation, there was a question as to whether the "co-location" rule applied in that situation. On the face of the rule itself, it would appear to apply regardless of the fact that the two satellites are licensed to two separate subsidiaries of the same company. In addition, to EchoStar's knowledge, the only precedent where separate fees were paid for co-located satellite capacity involved licensees that were independent of one another rather than co-owned as in this case. Nevertheless, in light of the then status of the two affiliated licensees as technically different entities, and out of an abundance of caution, EchoStar had paid for the two co-located satellites separately in previous years.

Whether or not that technicality prevented application of the "co-location" rule, it has now been eliminated. On February 25, 1999, the Commission granted the pro forma assignment of Directsat's license to EchoStar Satellite Corporation through the merger of Directsat into EchoStar.<sup>2</sup> Thus, EchoStar is currently the sole licensee of EchoStar 1 and EchoStar 2 -- technically identical Direct Broadcast Satellites that are co-located at the 119° W.L. nominal orbital location. EchoStar through its undersigned counsel communicated these facts to Commission staff.<sup>3</sup> The staff has advised that the co-location rule applies (and the two satellites should be deemed one) with respect to subsequent fiscal years. With respect to fiscal year 1999, the staff has suggested that it would be reasonable for EchoStar to request proration of the fee. Specifically, the staff suggested filing the instant petition for a fee that would be reduced by prorating the fiscal year based on the February 25, 1999 date of the license assignment, accompanied by that reduced fee. In other words, should this petition be granted, EchoStar would owe an annual fee for three satellites for the five months from October 1, 1998 (beginning of fiscal year 1999) through February 25, 1999, and a fee for two satellites starting

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<sup>1</sup> EchoStar 3 (Call Sign DBS-88-08) is located at a different orbital location, 61.5° W.L.

<sup>2</sup> *See* Letter from Thomas S. Tycz to P. Malet, P. Michalopoulos and M. Paul and instrument attached thereto (Feb. 25, 1999) (0800B3) (Attachment 1).

<sup>3</sup> EchoStar first contacted Claudette E. Pride of the Office of Managing Director and was referred by Ms. Pride to Jacqueline Ponti of the International Bureau.

Mr. Andrew S. Fishel  
September 21, 1999  
Page 3

from February 25, 1999, when the two co-located and identical satellites became licensed to the same entity.

Congress has authorized the Commission to reduce, waive or defer regulatory fees in instances where "where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest." *See* 47 U.S.C. § 159(d); *see also* 47 C.F.R. § 1.1166. In the instant case good cause exists. Since it was unclear in the first place whether EchoStar owed separate fees for EchoStar 1 and 2 and since the only technicality that might suggest the need to pay separate fees was eliminated on February 25, 1999, it is only equitable to at least permit EchoStar to pay based on the proration suggested by the Commission staff – *i.e.*, to pay for two separate satellites only for the first five months of the fiscal year 1999 – the year for which the fees are being collected. Moreover, the public interest is served by the Commission applying its rules in light of a specific set of circumstances in a practical manner, while following the Congressional mandate for fee collection,<sup>4</sup> rather than following a rigid course that would fail entirely to consider and evaluate particular circumstances. EchoStar is not seeking to avoid payment of any fees. In fact, EchoStar, through its past behavior, has demonstrated a willingness to err on the side of caution and arguably has paid in excess of what was owed to remain well within the scope of the Commission's rules and policies. Here, EchoStar is merely seeking to pay an amount reflective of its activity in fiscal year 1999.

Accordingly, EchoStar hereby submits a completed form 159 and reduced regulatory fee as calculated based on the proration described above. *See* 47 C.F.R. § 1.1166 (d) ("[p]etitions for reduction of a fee must be accompanied by the full fee less the amount of the requested reduction.") (emphasis added).<sup>5</sup> Specifically, under the prorated calculation, EchoStar owes \$130,550 for each of two licensed and operational satellites (EchoStar 3 in Call Sign DBS-88-08 and EchoStar 1 in Call Sign DBS-88-01) and a fee equal to five twelfths of \$130,550 (or \$54,395.84) for EchoStar 2 in Call Sign DBS-88-02, since EchoStar 2 should not be counted as a separate satellite except at most for the first five months of fiscal year 1999. Accordingly, EchoStar is herewith submitting Form 159 and three checks totaling \$315,495.84: two checks in the amount of \$130,550 each (for each of EchoStar 3 and EchoStar 1) and one check in the amount of \$54,395.84 (for EchoStar 2).

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<sup>4</sup> *See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, Report and Order, FCC 99-146 (rel. June 18, 1999).

<sup>5</sup> EchoStar has been advised by the Commission staff that, for this type of petition, this Rule controls notwithstanding the statement in the *Fees Public Notice* that certain requests must be accompanied by full payment without any reduction.

Mr. Andrew S. Fishel  
September 21, 1999  
Page 4

For the foregoing reasons, EchoStar respectfully requests a determination that a reduced regulatory fee is due and/or a reduction in the regulatory fee due for fiscal year 1999 as indicated above.

Respectfully submitted,

By:



Philip L. Malet  
Pantelis Michalopoulos  
Tekedra V. McGee  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-3000  
Its Attorneys

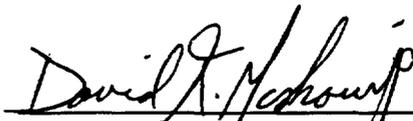
David K. Moskowitz  
Senior Vice President and  
General Counsel  
**EchoStar Satellite Corporation**  
5701 South Santa Fe  
Littleton, CO 80120  
(303) 723-1000

Dated: September 21, 1999

cc: Jacqueline Ponti  
Claudette E. Pride

**DECLARATION**

I, David K. Moskowitz, hereby declare under penalty of perjury that I have read the foregoing and the statements made therein are true and accurate to the best of my information, knowledge and belief.

  
\_\_\_\_\_  
David K. Moskowitz  
Senior Vice President and General Counsel  
EchoStar Satellite Corporation

Dated: September 21, 1999

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

IN REPLY REFER TO:  
0800B3

February 25, 1999

Philip L. Malet  
Pantelis Michalopoulos  
Marc A. Paul  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036-1795

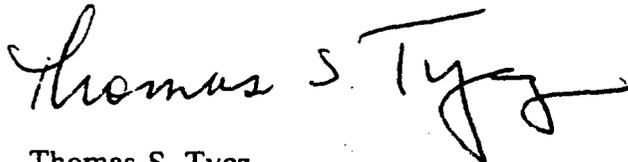
Reference: Request for Pro Forma Assignment of License of EchoStar  
Satellite Corporation (File Nos. SAT-ASG-19990113-  
00010/11/12)

Dear Messrs. Malet, Michalopoulos & Paul:

This is in response to the referenced application of EchoStar Satellite Corporation. EchoStar Satellite is seeking consent to a pro forma assignment of the Direct Broadcast Satellite authorizations of Direct Broadcast Satellite Corporation (DBSC), EchoStar DBS Corporation (EchoStar DBS) and Directsat Corporation (Directsat) from DBSC, EchoStar DBS and Directsat to EchoStar Satellite. All of these entities are direct or indirect wholly-owned subsidiaries of EchoSat Communications Corporation.

Pursuant to Section 0.261 of the Commission's rules on delegations of authority, 47 C.F.R. § 0.261, Lockheed Martin Corporation's application for pro forma assignment of license IS HEREBY GRANTED. Enclosed is a pro forma assignment grant document (FCC Form 732) for the authorized facilities.

Sincerely,



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

enclosure

**UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

File No(s).

SAT-ASG-19990113-00010

Class of station(s)

Direct Broadcast Satellite

<input checked="" type="checkbox"/> <b>CONSENT TO ASSIGNMENT:</b> <input type="checkbox"/> <b>CONSENT TO TRANSFER CONTROL:</b> <input type="checkbox"/> <b>CONSENT TO TRANSFER STOCK:</b> Whereby of Control by is effected.	<b>FROM:</b> EchoStar DBS Corporation 5701 South Santa Fe Littleton, CO 80120 <hr/> <b>TO:</b> EchoStar Satellite Corporation 5701 South Santa Fe Littleton, CO 80120
<b>Licensee/Permittee:</b> <b>(for transfer only)</b>	

CALL SIGN(s) STATION LOCATION(s)

CALL SIGN(s) STATION LOCATION(s)

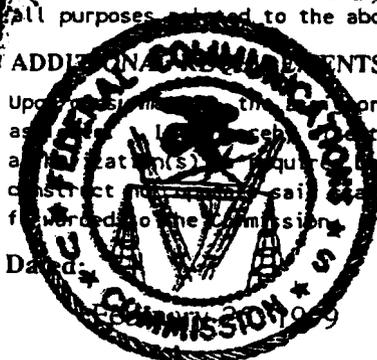
S2231; 74-SAT-P/LA-96  
72-SAT-MP/ML-98

Under authority of the Communications Act of 1934, as amended, the consent of the Federal Communications Commission is hereby granted to the transaction indicated above. The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith. The actual consummation of voluntary transactions shall be completed within 60 days from the date hereof, and notice in letter form thereof shall promptly be furnished the Commission by the buyer showing the date the acts necessary to effect the transaction were completed. Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above-described station(s).

**ADDITIONAL COMMENTS FOR ASSIGNMENTS ONLY:**

Upon consummation of this transaction, the assignee must deliver the permit/license, including any modifications thereof to the assignor. The assignor is required to post a copy of this consent with the station. The assignee is not authorized to construct or operate the station(s) unless and until notification of consummation in letter form has been forwarded to the Commission.

Date:



**UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

File No(s).

SAT-ASG-19990113-00011

Class of station(s)

Direct Broadcast Satellite

<input checked="" type="checkbox"/> <b>CONSENT TO ASSIGNMENT:</b> <input type="checkbox"/> <b>CONSENT TO TRANSFER CONTROL:</b> <input type="checkbox"/> <b>CONSENT TO TRANSFER STOCK:</b> Whereby of Control by is effected.	<b>FROM:</b> Direct Broadcasting Satellite Corporation 5701 South Santa Fe Littleton, CO 80120
<b>Licensee/Permittee:</b> (for transfer only)	<b>TO:</b> EchoStar Satellite Corporation 5701 South Santa Fe Littleton, CO 80120

CALL SIGN(s) STATION LOCATION(s)

CALL SIGN(s) STATION LOCATION(s)

DBS 88-08

Under authority of the Communications Act of 1934, as amended, the consent of the Federal Communications Commission is hereby granted to the transaction indicated above. The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith. The actual consummation of voluntary transactions shall be completed within 60 days from the date hereof, and notice in letter form thereof shall promptly be furnished the Commission by the buyer showing the date the acts necessary to effect the transaction were completed. Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station(s).

**ADDITIONAL REQUIREMENTS FOR ASSIGNMENTS ONLY:**

the assignor must deliver the permit/license, including any modifications thereof to the assignee. The assignee is hereby directed that, upon consummation, a copy of this consent be posted with the station and a copy of this consent be required by the Commission's Rules and Regulations. The assignee is not authorized to consummate the transaction on the said station(s) unless and until notification of consummation in letter form has been forwarded to the Commission.



February 1999

**UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

File No(s).

SAT-ASG-19990113-00012

Class of station(s)

Direct Broadcast Satellite

<input checked="" type="checkbox"/> <b>CONSENT TO ASSIGNMENT:</b>  <input type="checkbox"/> <b>CONSENT TO TRANSFER CONTROL:</b>  <input type="checkbox"/> <b>CONSENT TO TRANSFER STOCK:</b> Whereby of Control by is effected.	<b>FROM:</b> Directsat Corporation 5701 South Santa Fe Littleton, CO 80120  <b>TO:</b> EchoStar Satellite Corporation 5701 South Santa Fe Littleton, CO 80120
<b>Licensee/Permittee: (for transfer only)</b>	

CALL SIGN(s) STATION LOCATION(s)

CALL SIGN(s) STATION LOCATION(s)

DBS 88-02

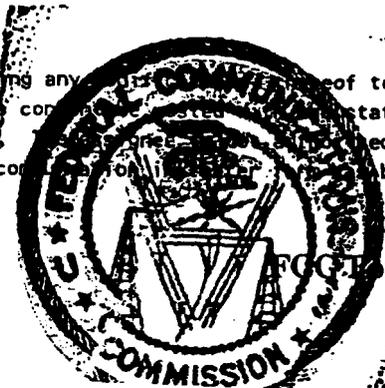
Under authority of the Communications Act of 1934, as amended, the consent of the Federal Communications Commission is hereby granted to the transaction indicated above. The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith. The actual consummation of voluntary transactions shall be completed within 60 days from the date hereof, and notice in letter form thereof shall promptly be furnished the Commission by the buyer showing the date the acts necessary to effect the transaction were completed. Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station(s).

**ADDITIONAL REQUIREMENTS FOR ASSIGNMENTS ONLY:**

Upon consummation the assignor must deliver the permit/license, including any other documents in connection with the station authorization(s) as required by the Commission's Rules and Regulations. The assignor shall not be permitted to construct nor operate said station(s) unless and until notification of completion of the transaction has been forwarded to the Commission.

Dated:

February 25, 1999



Form 732

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION  
REMITTANCE ADVICE

APPROVED BY OMB 3060-0589

(1) LOCKBOX # 358835

PAGE NO. 1 OF 1

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

EchoStar Satellite Corporation

(3) TOTAL AMOUNT PAID (dollars and cents)

\$ 315,495.84

(4) STREET ADDRESS LINE NO. 1

Attn: David K. Moskowitz, Esq.

(5) STREET ADDRESS LINE NO. 2

5701 South Santa Fe

(6) CITY

Littleton

(7) STATE

CO

(8) ZIP CODE

80120

(9) DAYTIME TELEPHONE NUMBER (include area code)

(303) 723-1000

(10) COUNTRY CODE (if not in U.S.A.)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B  
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME (if paying by credit card, enter name exactly as it appears on your card)

EchoStar Satellite Corporation

(12) STREET ADDRESS LINE NO. 1

Attn: David K. Moskowitz, Esq.

(13) STREET ADDRESS LINE NO. 2

5701 South Santa Fe

(14) CITY

Littleton

(15) STATE

CO

(16) ZIP CODE

80120

(17) DAYTIME TELEPHONE NUMBER (include area code)

(303) 723-1000

(18) COUNTRY CODE (if not in U.S.A.)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

(19A) FCC CALL SIGN/MOTHER ID	(20A) PAYMENT TYPE CODE (PTC)	(21A) QUANTITY	(22A) FEE DUE FOR (PTC) IN BLOCK 20A	FCC USE ONLY
	C S G 9	1	\$ 130,550	
(22A) FCC CODE 1		(24A) FCC CODE 2		
(19B) FCC CALL SIGN/MOTHER ID	(20B) PAYMENT TYPE CODE (PTC)	(21B) QUANTITY	(22B) FEE DUE FOR (PTC) IN BLOCK 20B	FCC USE ONLY
	C S G 9	1	\$ 130,550	
(22B) FCC CODE 1		(24B) FCC CODE 2		
(19C) FCC CALL SIGN/MOTHER ID	(20C) PAYMENT TYPE CODE (PTC)	(21C) QUANTITY	(22C) FEE DUE FOR (PTC) IN BLOCK 20C	FCC USE ONLY
	C S G 9	1	\$ 54,395.84	
(22C) FCC CODE 1		(24C) FCC CODE 2		
(19D) FCC CALL SIGN/MOTHER ID	(20D) PAYMENT TYPE CODE (PTC)	(21D) QUANTITY	(22D) FEE DUE FOR (PTC) IN BLOCK 20D	FCC USE ONLY
(22D) FCC CODE 1		(24D) FCC CODE 2		

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25) PAYER TIN	0 8 4 1 1 1 4 0 3 9	(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-11 IS DIFFERENT FROM PAYER NAME IN A-2	APPLICANT TIN	0 8 4 1 1 1 4 0 3 9
----------------	---------------------	---	---------------	---------------------

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT  
I, David K. Moskowitz, Certify under penalty of perjury that the foregoing and supporting information are true and correct to the best of my knowledge, information and belief. SIGNATURE David Moskowitz / pm

SECTION F - CREDIT CARD PAYMENT INFORMATION

(28) MASTERCARD/VISA ACCOUNT NUMBER:  MASTERCARD  VISA

EXPIRATION DATE: MONTH  YEAR

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization(s) herein described. AUTHORIZED SIGNATURE:  DATE:

**ECHOSTAR**

ECHOSTAR SATELLITE CORP  
PO BOX 9021  
PITTSBURGH, PA 15201-9021

BANK OF AMERICA  
CHICAGO  
COMMERCIAL DISBURSEMENT ACCT  
CHICAGO, IL

Date: 08/25/99

Check #: 339746

PAY \*\*One Hundred Thirty Thousand Five Hundred Forty Dollars And 00 Cents\*\*

Check Amount  
\$130,550.00

FOR THE ORDER OF FEDERAL COMMUNICATIONS COMMISSION  
REGULATORY FEES

PO BOX 3588  
PITTSBURGH, PA 15251

*[Handwritten Signature]*  
AUTHORIZED SIGNATURE

WARNING: ORIGINAL DOCUMENT HAS AN ARTIFICIAL WATERMARK ON REVERSE SIDE - HOLD AT ANGLE TO VIEW.

⑈ 339746 ⑈ ⑆ 071923284 ⑆ 87659 ⑈ 60732 ⑈

⑆ 0013055000 ⑆

WARNING: ORIGINAL DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER.



ECHOSTAR SATELLITE CORP  
PO BOX 9021  
DUBLIN, CA 94568-9021

BANK OF AMERICA  
CHICAGO  
COMMERCIAL DISBURSEMENT ACCT  
CHICAGO, IL

Date: 08/25/99

Check #: 339748

PAY One Hundred Thirty Thousand Five Hundred Fifty Dollars And 00 Cents

Check Amount  
130,550.00

TO THE ORDER OF FEDERAL COMMUNICATIONS COMMISSION  
REGULATORY FEES

PO BOX 35887  
PITTSBURGH, PA 15257

AUTHORIZED SIGNATURE

WARNING: ORIGINAL DOCUMENT HAS AN ARTIFICIAL WATERMARK ON REVERSE SIDE - HOLD AT ANGLE TO VIEW.

⑈ 339748 ⑈ ⑆ 071923284 ⑆ 87659⑈60732⑈

⑈ 0013055000 ⑈

**ECHOSTAR**  
SATELLITE TELEVISION

ECHOSTAR SATELLITE CORP  
PO BOX 9023  
LITTLETON, CO 80120-0023

Date 09/15/99

Check # 340375

PAY TO THE ORDER OF **Seventy-Four Thousand Three Hundred Ninety-Five Dollars And 04 Cents**

Check Amount  
**74,395.04**

TO THE ORDER OF  
**FEDERAL COMMUNICATIONS COMMISSION  
REGULATORY FEES  
PO BOX 358835  
PITTSBURGH, PA 15251**

  
AUTHORIZED SIGNATURE

WARNING: ORIGINAL DOCUMENT HAS AN ARTIFICIAL WATERMARK ON REVERSE SIDE - HOLD AT AN ANGLE TO VIEW.

⑈340375⑈ ⑆071923284⑆ 87659⑈60732⑈

⑆0005439584⑆

# Payment Transactions Detail Report

Date: 11/08/1999

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name				Fcc Account Number	Payer TIN	Received Date				
9909238835221001	EHOSTAR SATELLITE CORPORATION 5701 SOUTH SANTA FE				WP00015359	0841114039	9/21/1999 00:00:0				
	LITTLETON	CO	80120								
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$130,550.00	\$130,550.00	1	CSG9	1		EHOSTAR SATELLITE CORPORATION	80120		\$130,550.00	1	PMT
<b>Total</b>	<b>1</b>								<b>\$130,550.00</b>		

# Payment Transactions Detail Report

Date: 11/08/1999

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name			Fcc Account Number	Payer TIN	Received Date					
9909238835221002	EHOSTAR SATELLITE CORPORATION 5701 SOUTH SANTA FE  LITTLETON CO 80120			WP00015359	0841114039	9/21/1999 00:00:0					
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$130,550.00	\$130,550.00	1	CSG9	1		EHOSTAR SATELLITE CORPORATION	80120		\$130,550.00	1	PMT
<b>Total</b>									<u>\$130,550.00</u>		

# Payment Transactions Detail Report

Date: 11/08/1999

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name			Fcc Account Number	Payer TIN	Received Date					
9909238835221003	ECHOSTAR SATELLITE CORPORATION 5701 SOUTH SANTA FE  LITTLETON CO 80120			WP00015359	0841114039	9/21/1999 00:00:0					
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$54,395.84	\$54,395.84	1	CSG9	1		ECHOSTAR SATELLITE CORPORATION	80120		\$54,395.84	1	PMT
<b>Total</b>	<b>1</b>								<b>\$54,395.84</b>		



FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL

## *memorandum*

TO: Claudette Pride, OMD  
Regina Dorsey, OMD  
Mark Reger, CFO

FROM: Paul K. Cascio, OGC

SUBJECT: Request for Reduction of Regulatory Fee for Fiscal Year (FY) 1999; EchoStar Satellite Corporation, Call Signs DBS-88-01, DBS-88-02, and DBS-88-08, Fee Control Numbers 9909238835221001, 9909238835221002, 9909238835221003.

DATE: August 3, 2001

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### Request and the Facts

Pantelis Michalopoulos, from Steptoe & Johnson LLP, requests that the Commission consolidate the fiscal year (FY) 1999 regulatory fees due for three satellites that were licensed to EchoStar Satellite Corporation (ESC) in February 1999. Counsel asserts that the company's mid-year merger with a subsidiary<sup>1</sup> resulted in ESC obtaining two more licenses, one of which is for a satellite that is technically identical to one previously licensed to ESC.<sup>2</sup> Consequently, he

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<sup>1</sup> The request describes ESC and DST as both being subsidiaries of ECC, and that ESC received the DBS licenses from DST; however, it does not describe the relationship or corporate size of the two companies.

<sup>2</sup> ESC characterizes the satellites as technically identical geostationary satellites co-located in the same orbital location, which is its base of the assertion that it need pay for only one satellite. The factual assertion that the satellites are technically identical is unsubstantiated in the request; moreover, it appears there is contradictory information contained in other Commission orders. For example, in 1998 the satellite identified below as EchoStar 2 was operating more than 2° from its assigned 118° W.L. The discussion in the Commission's *Notice of Apparent Liability*, Directsat Corporation, DA 98-1070, 13 FCC Rcd 16505, noted that DST operated EchoStar 2 at 119.0079° W.L. on April 2, 1998, which orbital location was more than 2° from its assigned 118° W.L., even though DST was "required to operate EchoStar 2 within plus or minus 0.05 degrees of 118.8° W.L. The Commission imposed a forfeiture of \$20,000 and ordered that DST relocate EchoStar 2 to 119.05° W.L. In a different order related to EchoStar 1, the Commission sanctioned ESC for allowing the EchoStar 1 satellite to move East and operate at 118.91372002° W.L., which was "more than 0.2 degrees from its assigned 119.2° W.L. orbit location." *Notice of Apparent Liability*, EchoStar Satellite Corporation, DA 98-1071, 13 FCC Rcd. 16,510. The Commission ordered ESC to relocate EchoStar to "its assigned location of 119.2° W.L. These NAL are noted to highlight factual matters from which we believe the need arises to verify the assertion that two satellites are "technically identical." In that regard, from the NAL we note that the Commission ordered that the two satellites be located at 119.05° W.L. and

interprets a portion of the Commission's fee calculation guidance,<sup>3</sup> which counts technically identical satellites as one, to permit ESC to prorate a regulatory fee for one of the satellites. In this manner, ESC seeks to eliminate the fee for that satellite effective on the date of the merger. Applying the theory to the assumed facts of this request, and relying on 47 CFR § 1.1166(d), ESC paid the required fees for two of the satellites (\$130,550 for each satellite), and it paid a prorated fee equal to 5/12's of the fee for the third satellite (\$54,395.84). We disagree with ESC's analysis and recommend that ESC pay the difference owed, \$76,154.16, for the third satellite.

### *The Transaction*

For purposes of resolving the waiver matter in this request, we rely on the information counsel provided.<sup>4</sup> According to counsel, EchoStar Communications Corporation (ECC) owned ESC and Directsat Corporation (DST) as "indirect wholly owned subsidiaries."<sup>5</sup> Before February 25, 1999, DST held licenses on satellites DBS-88-02 and DBS-88-08. On February 25, 1998, ESC added the two licenses<sup>6</sup> to another license it held on satellite DBS-88-01.<sup>7</sup> Consequently, ESC

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119.2° W.L., respectively, which only when positioned at their extreme relative closest points to each other (while also approaching a violation of its license) would the two satellites be "within plus or minus 0.05 degrees" of each other. We also note from the two NAL that during the period March 27, 1998 to June 8, 1998, EchoStar 1 and EchoStar 2 were operating outside their assigned orbits, and even then were operating 1.0942° different from each other. Absent confirming evidence, we do not presume that both satellites were in technically identical orbits on October 1, 1998. Finally, we note that the Commission Opinion and Order released on April 27, 1998 authorized ESC to launch EchoStar 4 into the 119.2° W.L. orbital position and to move EchoStar 1 from 119° W.L. and operate it at 148° W.L. orbital position. *Memorandum Opinion and Order*, EchoStar Satellite Corporation, Directsat Corporation, EchoStar DBS Corporation, 13 FCC Rcd. 8595 (1998). Despite the order in the NAL pertaining to EchoStar 1 (to relocate to its "assigned location of 119.2° W.L."), it appears EchoStar 1 would have been at a much different orbital location than EchoStar 2. Further confusing the location of the several EchoStar satellites, on November 27, 2000, the Commission granted ESC authority to make minor modifications, which included locating EchoStar 6 at 119.05° W.L., and relocating EchoStar 4 from 119.35° W.L. to 118.9° W.L., EchoStar 2 from 119.05° W.L. to 119.35° W.L., and EchoStar 1 from 119.2° W.L. to 148° W.L. *Memorandum Opinion and Order*, EchoStar Satellite Corporation Application for Authority to Make Minor Modifications to Direct Broadcast Satellite Authorizations, Launch and Operation Authority, DA 00-2382, released November 27, 2000, 2000 WL 1744876 (F.C.C.). Whether ESC's satellites are technically identical is capable of some discussion and worthy of further inquiry. In that regard, the extent of the minor modifications of the orbital locations raises issues whether the subject satellites were technically identical on October 1, 1998 (the date the fee accrues), February 25, 1999 (the date on which ESC acquired the satellites from DST), and at all times thereafter. Consequently, we require proof of the assertion. Even so, because we believe the request fails to reach the statutory level of good cause shown, where such action would promote the public interest, it is adequate for the record to note the contradictory information.

<sup>3</sup> Public Notice, FY 1999 International and Satellite Services Regulatory Fees, August 2, 1999, 1999 WL 561597 (F.C.C.) ("Multiple technically identical geostationary satellites co-located at the same orbital location will be considered one station for the purpose of per-space station regulatory fee calculation.")

<sup>4</sup> Subject to the earlier discussion at fn 2, *supra*, that the essential predicate fact, whether the satellites are technically identical was not established.

<sup>5</sup> Absent clarification, we construe this description, indirect wholly owned subsidiaries, to mean that ECC was a stock holding company responsible for both ESC and DST, but that there was no direct operational control over one or more of the companies by any other.

<sup>6</sup> ESC asserts that in prior years it paid the regulatory fees for both satellites separately, "because at the time the satellites were licensed to two different companies."

<sup>7</sup> Although counsel did not provide direct evidence of the license holder's identity before February 25, we relied on the facts in the NAL (*see* fn 2, *supra*), *i.e.*, the Commission licensed ESC and DST to begin operations with

now is the licensee for satellites DBS-88-01 and DBS-88-02 (EchoStar 1 and 2, respectively), which allegedly operate in the same orbital location, and DBS-88-08 (EchoStar 3). According to counsel, the Commission should apply its co-location rule to DBS-88-01 and DBS-88-02 beginning with the date of the merger, February 25, 1999, and thereby reduce the total fees owed by ESC by \$76,154.16, which is the prorated reduction of the annual fee for DBS-88-02 (EchoStar 2). As a matter of completeness, we construe the request in the alternative, as a request that the Commission reduce the fee pursuant to 47 U.S.C. § 159(d) and as a request for a *de facto* refund of the fee for the balance of the year. We do not accept the asserted facts without proper proof, and we disagree with ESC's analysis.

### The Standards

Although ESC requests a determination that a reduced regulatory fee is due, we construe the request in the alternative to evaluate the applicability of the Commission's refund procedures to the situation. As to a fee reduction, Congress permitted the Commission to waive, reduce, or defer payment of the regulatory fees upon a showing of good cause and that such action "would promote the public interest." 47 U.S.C. §§159(d) and (f), *see* 47 CFR § 1.1166.<sup>8</sup> The Commission interprets the waiver, reduction, and deferral provisions<sup>9</sup> narrowly and grants relief on only extraordinary and compelling circumstances.<sup>10</sup>

We look to the Commission's refund procedures at 47 CFR § 1.1160 to determine if an alternative base for relief existed. That rule provides that regulatory fees will be refunded only in three specific instances, *i.e.*, when no regulatory fee is required, in the case of an advance payment of regulatory fees (not applicable to these facts) and when a waiver is granted in accordance with § 1.1166. The rule is explicit that no pro-rata refund of an annual fee will be issued, no refunds will be issued based on unexpired partial years, and no refund will be processed without a written request. Although ESC made the request during the fee payment period, it has the same effect as seeking prorationing of the annual fee.<sup>11</sup>

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EchoStar 1 and EchoStar 2 on November 26, 1996. We assume from the date that neither ESC nor DST paid a satellite regulatory fee for the two satellites during FY 1997.

<sup>8</sup> *See Report & Order, Implementation Of Section 9 Of The Communications Act*, 9 FCC Rcd. 5333, ¶ 29,

Section 9(d) provides that "[t]he Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." 47 U.S.C. § 159(d). Section 9(d) is similar to, if not identical with section 8(d)(2) of the Act related to waivers and deferments of application fees. 47 U.S.C. § 158(d)(2). Pursuant to section 8(d)(2), we have permitted waivers only on a case-by-case basis following a demonstration that the public interest clearly overrides the private interest of the requester. Thus, in our NPRM, we proposed to restrict similarly waivers to encompass only those requests unambiguously articulating "extraordinary and compelling circumstances" outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee.

<sup>9</sup> 47 U.S.C. §§ 158 and 159.

<sup>10</sup> *NPRM, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year*, 9 FCC Rcd. 6957, ¶ 24; *Report and Order, supra*, 9 FCC Rcd 5333, ¶ 29. *See also Memorandum Opinion and Order, Columbia Communications Corporation*, 14 FCC Rcd, 1122 (1999) (unique circumstances required to demonstrate "good cause shown, where such action would promote the public interest." 47 U.S.C. § 159(d)).

<sup>11</sup> The request refers to a Commission staff suggestion to "request proration of the fee."

## Analysis

The FY 1999 regulatory fee was payable for any satellite that was operational as of October 1, 1998.<sup>12</sup> We accept that the three satellites, EchoStar 1, EchoStar 2, and EchoStar 3 were operational on that date, and that the licensee would otherwise have been required to pay the fee of \$130,550 for each satellite. Except for the conclusion offered by counsel, we have no evidence that the “EchoStar 1 and 2 in Call Signs DBS-88-01 and DBS-88-02, are technically identical and located at the same orbital location- the nominal 119° W.L. orbital location [footnote deleted].” Absent appropriate confirming proof, we do not assume that the satellites are within 0.05 degrees of each other even if allowed to drift within the permitted orbital deviation.<sup>13</sup> Consequently, we do not assume that a single fee would have been due even if the Commission licensed to ESC all satellites on October 1, 1998.

Assuming, *arguendo* that the satellites were technically identical, the regulatory fee accrued on October 1, 1998, but the licensee or holder of the authorization on the date the payment is due<sup>14</sup> during September 1999 pays the fee. Absent the consolidation, DST would have paid the regulatory fee on or before its due date, September 22, 1998. Assuming further, that ESC and DST are subsidiaries,<sup>15</sup> any consolidation after October 1, 1998 does not change the fact that a fee is required for any authorization issued on or before October 1, 1998. A fee reduction may be granted only upon “good cause shown, where such action would promote the public interest.”<sup>16</sup> ESC bases its request on the so-called co-location rule, which if applicable, would have taken effect on February 25, 1999, well after October 1, 1998 when the fee accrued. Counsel asserts good cause is shown “[s]ince it was unclear in the first place whether EchoStar owed separate fees for EchoStar 1 and 2 and since the only technicality that might suggest the need to pay separate fees was eliminated on February 25, 1998, it is only equitable to at least permit EchoStar to pay based on the proration suggested by the Commission staff . . .”

The analysis is problematic. Notwithstanding informal advisory comments by members of the Commission’s staff, plainly ESC and DST were separate licensees on October 1, 1998, and as required by the Communications Act of 1934, each licensee owed fees.<sup>17</sup> Consequently, we do

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<sup>12</sup> 47 U.S.C. § 159(a) and (b); *Report and Order*, Assessment and Collection of Regulatory Fees for Fiscal Year 1999, FCC 99-146, released June 18, 1999. ¶ 59.

<sup>13</sup> We rely on the Commission’s statement in the NAL (fn 2, *supra*) that the permitted orbital deviation is 0.05 degrees as the orbital tolerance permitted to define multiple satellites as being technically identical in orbit location.

<sup>14</sup> *Report and Order*, Assessment and Collection of Regulatory Fees for Fiscal Year 1999, *supra*, fn 47; Public Notice, FY 1999 International and Satellite Services Regulatory Fees, August 2, 1999.

<sup>15</sup> We have no proof of their corporate relationships and do not accept counsel’s invitation to pierce the corporate veil to find that DST and ESC were on October 1, 1998 a single corporate entity for purposes of assessing fees due the Commission. Their separate histories in the context of the two Notices of Apparent Liability, *supra*, argue against a finding that they were always one legal entity.

<sup>16</sup> 47 U.S.C. § 159(d).

<sup>17</sup> We again turn to the NAL Directsat Corporation, 13 FCC Rcd 16505, fn 2, *supra*, to determine the identity of the license holders, *i.e.*, “Directsat is the licensee of EchoStar 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 . . .” We compare that information on EchoStar 2 with the license information on EchoStar 1, *e.g.*, “EchoStar is the licensee of EchoStar 1, . . . On January 11, 1996, EchoStar was authorized to launch its EchoStar 1 satellite to the 119.2° W.L. orbital location, and on November 26, 1996, EchoStar was licensed to begin operations.” See fn 2, *supra*, NAL, EchoStar Satellite Corporation, 13 FCC Rcd 16510.

not accept counsel's view that the fees for ESC and DST resulted from a technicality. Moreover, there is no factual basis to assert that the merger eliminated the obligation for the licensee (DST and later ESC) to pay the fee on the particular satellite as of October 1, 1998. As a matter of convenience, the Commission stated in the Report and Order that the fee is paid by the licensee or holder of the authorization on the date that the payment is due; however, the fee accrued with the authorization on or before October 1, 1998. Finally, counsel attempts to change Section 159(d) from "the two-pronged standard, "good cause shown and where [the action] would promote the public interest" to one based on equitable relief. In addressing the public interest element, counsel suggests that pragmatic fee collection taking into account "a specific set of circumstances" promotes the public interest in reducing the fee rather than collecting the amounts required by Congress. We do not accept the invitation to decide a request for a fee reduction on the uncertainties of equitable pragmatism. In our opinion, ESC failed to meet the statutory standard.

Finally, we looked to the rule applicable to refunds,<sup>18</sup> and we find the Commission's clear emphasis that "no pro-rata refund of an annual fee will be issued" precludes our application of counsel's equitable pragmatism theory.

#### Conclusion

We recommend that you deny the request for a reduction in the FY 1999 regulatory fee for satellite, EchoStar 2, and require the additional payment of \$76,154.16. No penalty is due because our rule<sup>19</sup> permits payment of the estimated reduced fee with the request for relief.

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<sup>18</sup> 47 CFR § 1.1160.

<sup>19</sup> 47 CFR § 1.1166(d).

Payment Search Detail

Grant Amt	Storage Amt	Assistance ID	Payment Type	Date Recd	CD
\$2,035.00	\$0.00	312903	CHECK	08/31/2001	568362
\$2,035.00	\$0.00	312904	CHECK	08/31/2001	568362
\$2,035.00	\$0.00	312902	CHECK	08/31/2001	568362
\$392,508.00	\$0.00	1020844	CHECK	09/21/2001	
<b>\$76,154.16</b>	<b>\$0.00</b>	<b>1020845</b>	<b>CHECK</b>	<b>09/24/2001</b>	
\$145.00	\$0.00	313973	CHECK	09/25/2001	

- Credit Card Info
- Payor Info
- Bad Check Info
- Changer Info
- Acct Info
- Also Show JV'd transactions
- Move to Unapplied
- FCC Code Info
- Applicant Info
- Treasury Info
- Modify Payment
- Close

Payment Type Code	Payment Amount	Trans Code	Call Sign Other Id	Treasury Symbol	Date Last Changed	Changer Initials
CS65	\$76,154.16	PMT	8858492	27X6888	09/25/2001	SYS

Print Screen

Payment Amt	Overage Amt	Receiptance ID	Payment Type	Date Rec'd	CD
\$2,035.00	\$0.00	312963	CHECK	08/31/2001	568362
\$2,035.00	\$0.00	312964	CHECK	08/31/2001	568362
\$2,035.00	\$0.00	312962	CHECK	08/31/2001	568362
\$392,500.00	\$0.00	1020844	CHECK	09/21/2001	
<b>\$76,154.16</b>	<b>\$0.00</b>	<b>1020845</b>	<b>CHECK</b>	<b>09/24/2001</b>	
\$145.00	\$0.00	313973	CHECK	09/25/2001	

- Credit Card Info
- Payment Info
- Bad Check Info
- Changer Info
- Acct Info
- Also Show JV's transactions
- Move to Unapplied
- FCC Code Info
- Applicant Info
- Treasury Info
- Modify Payment
- Close

Payment Type Code	Payment Amount	Trans Code	CallSign Other Id	Treasury Symbol	Date Last Changed	Changer Initials
CS69	\$76,154.16	PMT	0558892	27X6088	09/25/2001	SYS

Print Screen