



FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF GENERAL COUNSEL

Memorandum

TO: Director, Reference Information Center
Chief, Office of Engineering and Technology

FROM:  Daniel M. Armstrong
Associate General Counsel

SUBJECT: *EchoStar Satellite L.L.C. v. FCC & USA*, No. 04-1304. Filing of a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit.

DATE: September 17, 2004

This is to advise you that, on September 3, 2004, EchoStar Satellite L.L.C. ("EchoStar") filed a Petition for Review in the U.S. Court of Appeals for the D.C. Circuit, pursuant to 47 U.S.C. 402(a), of the following orders: *Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations*, First Report and Order, ET Docket No. 00-11, 15 FCC Rcd 12118 (2000), and *Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations*, Memorandum Opinion and Order, ET Docket No. 00-11, 19 FCC Rcd 9964 (2004).

EchoStar challenges the Commission's creation of an engineering model that predicts whether a given geographic area will receive television reception above a certain strength level. If the signal strength falls below the threshold, DBS providers may provide their customers with "distant signals" from broadcast television stations. Congress directed in 47 U.S.C. § 339(c)(3) that the FCC create a model that takes into account "terrain, building structures, and other land cover variations." The Commission's empirical testing showed, however, that, with respect to VHF stations, taking those matters into account made the model's predictions less accurate, so the model does not give them any weight. EchoStar principally claims that by assigning the statutory factors zero weight with respect to VHF stations, the agency violated the statute.

The Court has docketed this case as No. 04-1304. The attorney assigned to handle the litigation of this case is Joel Marcus.