

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

In the Matter of
Auction of Direct Broadcast Satellite Licenses
AUC-03-52

ORDER

Adopted: January 5, 2004

Released: January 15, 2004

By the Commission:

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I. INTRODUCTION

1. On March 3, 2003, we issued a Public Notice announcing an auction of four licenses for Direct Broadcast Satellite ("DBS") service channels at orbit locations to which the United States is

assigned by the International Telecommunication Union (“ITU”) (Auction No. 52).¹ By this Order, we affirm our conclusion in the *Auction No. 52 Comment Public Notice* that our authority to auction these licenses has not been altered by regulatory and statutory actions taken since DBS auctions were last held,² and we decline to impose eligibility restrictions on the three available licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. We do not address in this Order the question of whether any eligibility restrictions are appropriate for the license to use the two available channels at the eastern orbit location of 61.5° W.L. but instead defer the resolution of this matter to a subsequent order.³ Our action today will enable the Commission to proceed expeditiously with the auction of the three available DBS licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations.

II. BACKGROUND

2. Eight orbit positions were assigned to the United States for DBS, under the auspices of the ITU, at the 1983 Regional Administrative Radio Conference for the Planning in Region 2 of the Broadcasting-Satellite Service in the Frequency Band 12.2 – 12.7 GHz and Associated Feeder Links in the Frequency Band 17.3 – 17.8 GHz. Under this Region 2 Band Plan for Ku-band DBS satellites (“ITU Region 2 Band Plan”), which was agreed upon by the nations present, the orbit slots assigned to the United States are for coverage of the United States.⁴

3. The Commission first established DBS service rules in 1982 by adopting “interim” rules that were codified in Part 100 of its regulations.⁵ In 1995, the Commission adopted new service rules for DBS to better reflect the realities of the service as it had evolved and to promote certain goals, including the

¹ *Public Notice, Auction of Direct Broadcast Satellite Service Licenses Scheduled for August 6, 2003*, Report No. AUC-03-52-A, 18 FCC Rcd 3478 (2003) (“*Auction No. 52 Comment Public Notice*”). The four licenses that were announced for Auction No. 52 are for channels at the following four orbit locations: 175° W.L., 166° W.L., 157° W.L., and 61.5° W.L. The 175° W.L., 166° W.L., and 157° W.L. orbit locations are capable of serving primarily the western portion of the United States. The 61.5° W.L. orbit location is capable of serving most of the contiguous United States except the Pacific Northwest. On June 11, 2003, the Wireless Telecommunications Bureau (“WTB”) issued a Public Notice announcing that Auction No. 52 would be delayed pending Commission resolution of the issues we address herein. *Public Notice, Auction of Direct Broadcast Satellite Service Licenses (Auction No. 52) Is Postponed*, Report No. AUC-03-52-B, 18 FCC Rcd 11515 (WTB 2003).

² These auctions were conducted in 1996. *See infra* note 8.

³ Channels 23 and 24 are available at 61.5° W.L.

⁴ The ITU Region 2 Band Plan assigns to the United States all of the channels at eight orbit locations capable of serving all or a portion of the United States. Specifically, these orbit locations are: 175° W.L., 166° W.L., 157° W.L., 148° W.L., 119° W.L., 110° W.L., 101° W.L., and 61.5° W.L. *See* Appendix 30 and Appendix 30A of the International Radio Regulations. Other countries in ITU Region 2 (North and South America) were each assigned orbit locations or channels to serve their individual countries. *See* ITU Radio Regulations Appendix 30 Article 10, Appendix 30A Article 9. Another assignment plan exists for countries in Regions 1 and 3. DBS is the acronym used in the United States to describe the domestic implementation of the satellite service known internationally as the broadcasting satellite service (“BSS”), which is subject to the International Radio Regulations BSS and feeder-link Plans contained in Appendices 30 and 30A of the ITU Radio Regulations.

⁵ *See* Inquiry into the Development of Regulatory Policy in Regard to Direct Broadcast Satellites for the Period Following the 1983 Regional Administrative Radio Conference, *Report and Order*, 90 FCC2d 676 (1982), *recon. denied*, 53 RR2d 1637 (1983).

provision of DBS service to Alaska and Hawaii. At the same time, the Commission, which had been given auction authority in 1993 by the addition of Section 309(j) to the Communications Act,⁶ adopted competitive bidding rules for the DBS service.⁷ The Commission held the first DBS auctions in January 1996.⁸

4. On April 11, 2002, WTB, acting under delegated authority, streamlined the DBS competitive bidding rules by conforming them with the general competitive bidding rules set forth in Part 1 of the Commission's rules.⁹ On June 13, 2002, the Commission released the *Part 100 R&O*, in which it further streamlined the regulation of DBS and moved the DBS rules from Part 100 to Part 25.¹⁰

5. The authority to establish specific procedures for auctions has been delegated to WTB.¹¹ Pursuant to this authority, WTB's standard practice, prior to every auction, is to issue a Public Notice seeking comment on the specific procedures to be used in the auction, including the design of the auction, mechanisms for conducting the auction, and reserve prices or minimum opening bids. After considering the comments received, WTB issues a Public Notice that announces the procedures that will be used. In

⁶ 47 U.S.C. § 309(j). See also Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 387 (1993). The Balanced Budget Act of 1997 amended Section 309(j) to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, with very limited exceptions. These exceptions are licenses and construction permits for public safety radio services, digital television service licenses and permits given to existing terrestrial broadcast licensees to replace their analog television service licenses, and licenses and construction permits for noncommercial educational broadcast stations and public broadcast stations under 47 U.S.C. § 397(6). See 47 U.S.C. § 309(j)(2); see also Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

⁷ See Revision of Rules and Policies for the Direct Broadcast Satellite Service, *Report and Order*, 11 FCC Rcd 9712 (1995) ("*DBS R&O*").

⁸ The Commission auctioned construction permits for 28 channels at the 110° W.L. orbit location in Auction No. 8 and 24 channels at the 148° W.L. orbit location in Auction No. 9.

⁹ Amendment of Parts 1, 21, 22, 24, 25, 26, 27, 73, 74, 80, 90, 95, 100, and 101 of the Commission Rules — Competitive Bidding, *Order*, 17 FCC Rcd 6534 (2002) (modified by errata, 17 FCC Rcd 11146 (WTB 2002)).

¹⁰ Policies and Rules for the Direct Broadcast Satellite Service, *Report and Order*, 17 FCC Rcd 11331 (2002) ("*Part 100 R&O*"). The competitive bidding rules applicable to DBS are now set forth at 47 C.F.R. §§ 1.2101-1.2113, 25.148(d) & (e).

¹¹ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448, ¶ 124 (1997). The Commission has directed WTB to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum accepted bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation. *Id.* at 448, ¶ 125. See also Amendment of Part 1 of the Commission's Rules — Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, 12 FCC Rcd 5686, 5697, ¶ 16 (1997) (clarifying that pursuant to Section 0.131 of the Commission's rules, the Chief of the Bureau has delegated authority to implement all of the Commission's rules pertaining to auctions procedures).

the case of Auction No. 52, the full Commission issued a public notice (the *Auction No. 52 Comment Public Notice*) seeking comment on two issues that were more appropriate for a Commission-level (rather than Bureau-level) decision. In the interests of administrative efficiency, our public notice also sought comment on those auction procedures that the Bureau usually handles on delegated authority.

6. With respect to the two non-procedural issues raised in the *Auction No. 52 Comment Public Notice*, the first concerned the auctionability of DBS licenses. More specifically, we explained our conclusion that the Commission has the authority to auction the DBS licenses included in Auction No. 52. In particular, we discussed the Commission's 1996 decision to remove FCC regulatory prohibitions on the provision of various satellite services beyond the borders of the United States¹² and Congress's enactment of Section 647 of the ORBIT Act, which prohibits the Commission from using competitive bidding to assign orbit locations or spectrum used "for the provision of international or global satellite communications services."¹³ The second issue involved DBS eligibility. Specifically, we sought comment on a number of questions regarding whether eligibility restrictions are warranted for any of the licenses to be offered in Auction No. 52. We received four comments and two reply comments in response to the *Auction No. 52 Comment Public Notice*.¹⁴

7. The *Auction No. 52 Comment Public Notice* also proposed the use of a simultaneous multiple round auction design for Auction No. 52, as well as upfront payments, minimum opening bids, and other auction procedures. Pursuant to its delegated authority, WTB will resolve all the procedural issues relating to Auction No. 52 on which we sought comment in the *Auction No. 52 Comment Public Notice*, will adjust the license inventory of Auction No. 52 to reflect our resolution of the eligibility issue for three licenses in this Order, and will announce a new start date for the auction.

III. DISCUSSION

A. The Commission's Authority to Auction DBS Licenses

1. The Public Notice

8. In the *Auction No. 52 Comment Public Notice*, we found that the DBS licenses that will be included in Auction No. 52 are not subject to the auction prohibition of the ORBIT Act because these

¹² Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, *Report and Order*, 11 FCC Rcd 2429 (1996) ("DISCO I").

¹³ Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 § 647 (enacted Mar. 12, 2000), codified at 47 U.S.C. § 765f ("ORBIT Act"). Section 647 states: "Notwithstanding any other provision of law, the Commission shall not have the authority to assign by competitive bidding orbital locations or spectrum used for the provision of international or global satellite communications services. The President shall oppose in the International Telecommunication Union and in other bilateral and multilateral fora any assignment by competitive bidding of orbital locations or spectrum used for the provision of such services."

¹⁴ Comments were filed on March 17, 2003, by Northpoint Technology, Ltd., and Broadwave USA, Inc. (collectively "Northpoint"), and on March 24, 2003, by R/L DBS Company, LLC, EchoStar Satellite Corporation ("EchoStar"), and PanAmSat Corporation ("PanAmSat"). Reply Comments were filed on March 31, 2003, by R/L DBS Company, LLC, and EchoStar. R/L DBS Company, LLC, has recently changed its name to Rainbow DBS Company LLC; therefore, we will henceforth refer to the company as "Rainbow DBS." A number of ex parte filings have also been made, which are listed in the Appendix.

licenses are for the use of DBS assignments that, under the ITU Region 2 Band Plan, have coverage patterns that are designed to – and do in fact – serve the United States almost exclusively.¹⁵ We further found that the Commission’s *DISCO I* decision did not change the fact that the ITU Region 2 Band Plan provides for service to the United States, with only incidental coverage outside the United States, from the eight orbit locations assigned to the United States under the Plan, and that DBS providers that operate under licenses for these eight DBS orbit locations must comply with the technical parameters of the ITU Region 2 Band Plan. We also concluded that incidental provision of transborder service does not convert an otherwise auctionable license into an unauctionable one. We concluded that the auctioning of U.S. DBS licenses that comply with the ITU Region 2 Band Plan is not inconsistent with the goals of the ORBIT Act.¹⁶

2. Comments

9. Northpoint filed comments in response to the *Auction No. 52 Comment Public Notice* disagreeing with our conclusion that the licenses to be included in Auction No. 52 are not subject to the auction prohibition of the ORBIT Act.¹⁷ According to Northpoint, DBS is an “international or global satellite communications service” and is not merely “incidentally international.”¹⁸ Northpoint points out that as a technical matter much of the Pacific rim is in view from the western orbit locations scheduled for inclusion in Auction No. 52 and states that “real companies” have applied to provide international DBS service.¹⁹ Thus, Northpoint argues that “any constraint on providing more than ‘incidental’ DBS service must be regulatory rather than technological in nature.”²⁰ Moreover, Northpoint argues that in *DISCO I*, in which the Commission lifted its restrictions on the provision of DBS service beyond the borders of the United States, the Commission regarded DBS as a “truly” international satellite communications service.²¹ Thus, according to Northpoint, our conclusion that DBS is not an international or global satellite communications service subject to the ORBIT Act represents a “dramatic and unexplained

¹⁵ *Auction No. 52 Comment Public Notice*, 18 FCC Rcd at 3479-80. As explained above, the licenses included in Auction No. 52 are for unassigned channels at orbit locations in the 12.2-12.7 GHz frequency bands and associated feeder-links in the 17.3-17.8 GHz bands to which the United States is assigned under the ITU Region 2 Band Plan.

¹⁶ *Id.* at 3480.

¹⁷ PanAmSat filed comments arguing that the ORBIT Act precludes auctions of fixed-satellite service licenses. *See generally* PanAmSat Comments. Because we address only the issue of our authority to auction DBS licenses, we do not need to consider PanAmSat’s comments here.

¹⁸ Northpoint Comments at 3-4.

¹⁹ *See id.* at 4, *citing* Compass Systems, Inc., Application for Authority to Construct a Direct Broadcast Satellite System (filed Mar. 20, 2002) (proposing to serve the continental United States, Alaska, Hawaii, Canada, Mexico, Australia, New Zealand, and Papua New Guinea from orbit locations at 157° W.L. and 166° W.L.); and FCC Public Notice, Satellite Applications Accepted for Filing, Report No. SAT-00110 (May 17, 2002) (noting that SES Americom sought permission “to offer satellite capacity for third party direct-to-home services to consumers in the United States and certain British Overseas Territories in the Caribbean”).

²⁰ Northpoint Comments at 4.

²¹ *Id.* at 4-6.

reversal” of Commission policy.²²

10. Northpoint also states that the ITU Region 2 Band Plan does not provide an adequate justification of our conclusion because the Commission routinely obtains modifications of the Region 2 Band Plan. In support of this assertion, Northpoint cites the Commission’s authorization of the launch of EchoStar 7 and other DBS satellites,²³ and further argues that if the Commission “seriously believed that the Region 2 Band Plan defines the limits of acceptable DBS service” it could not have accepted for filing SES Americom’s April 2002 request to provide DBS service to the United States and certain British Overseas Territories in the Caribbean.²⁴ Finally, Northpoint argues that even if the Commission were correct in concluding that DBS is not an “international or global satellite communications service,” the ORBIT Act would nevertheless prohibit auctions of DBS licenses because DBS relies on spectrum that is “used for the provision of” non-geostationary satellite orbit (“NGSO”) fixed-satellite service (“FSS”), which it states is “indubitably” an international or global satellite communications service.²⁵

11. The Satellite Broadcasting and Communications Association (“SBCA”) filed *ex parte* comments in response to the *Auction No. 52 Comment Public Notice* supporting our conclusion that the licenses to be included in Auction No. 52 are not subject to Section 647 of the ORBIT Act.²⁶ The SBCA points out that DBS is a domestic service offered to U.S. residents pursuant to a license issued by the FCC. Thus, SBCA argues that the harm Congress sought to prevent by enacting Section 647 of the ORBIT Act, i.e., a succession of auctions in numerous countries to which international satellite systems might be subject, is not implicated by the auction of U.S. DBS licenses. Moreover, SBCA asserts that Congress has decided that, with rare exceptions, auctions are the preferred means of awarding licenses to mutually exclusive applicants for authority to use the radio frequency spectrum in the United States.

3. Analysis

12. We affirm the conclusion we reached in the *Auction No. 52 Comment Public Notice* that the Commission has the authority to auction DBS licenses for channels at orbit locations assigned to the United States under the ITU Region 2 Band Plan because these licenses are used to provide a domestic service and therefore are not subject to the auction prohibition of the ORBIT Act. Licenses for the use of DBS channels and orbit locations assigned to the United States under the ITU Region 2 Band Plan, including the licenses slated for Auction No. 52, authorize operation in the 12.2-12.7 GHz frequency

²² *Id.* at 2, 6.

²³ *Id.* at 7-9.

²⁴ *Id.* at 9.

²⁵ *Id.* at 10.

²⁶ Letter from Margaret L. Tobey, Counsel for Satellite Broadcasting and Communications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 9, 2003); Letter from Margaret L. Tobey, Counsel for Satellite Broadcasting and Communications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 9, 2003); and Letter from Margaret L. Tobey, Counsel for Satellite Broadcasting and Communications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 9, 2003).

bands and associated feeder-links for service to the United States,²⁷ and licensees must provide service on those channels and orbit locations to the United States.²⁸

13. None of Northpoint's arguments changes the fact that the channels and orbit locations we plan to license by auction were assigned to the United States because of their coverage of the United States alone. Nor do they change the fact that the licenses to be included in Auction No. 52 must be used to provide a service delivered almost exclusively to U.S. consumers. Rather, Northpoint's basic arguments are premised on the assertions that (a) any degree of transborder coverage will bring a DBS license under the ORBIT Act's auction prohibition, (b) DBS licensees will, under certain scenarios, be able to provide a full-fledged international satellite service, and (c) any international satellite use of the spectrum by licensees in other services within the 12.2 – 12.7 GHz band strips the FCC of its authority to auction any license in an otherwise auctionable service within that band. For the reasons set forth below, we find that these arguments are without merit.

14. First, we disagree with Northpoint's exceedingly broad reading of the ORBIT Act auction prohibition, which would result in a bar on the use of the competitive bidding process for any service that provided any degree of transborder coverage, no matter how insignificant. As we indicated in the *Auction No. 52 Comment Public Notice*, it would be unreasonable to conclude that Congress intended that the incidental provision of transborder service would convert an otherwise auctionable license into an unauctionable one. Certainly, the rationale for the prohibition does not suggest such a result. As we discussed in the *Auction No. 52 Comment Public Notice* and as the SBCA also notes, the concerns Congress identified in enacting Section 647 of the ORBIT Act are not implicated by the assignment of U.S. DBS licenses through competitive bidding. The legislative history of the ORBIT Act auction exemption, which consists of a House Commerce Committee Report on an earlier, unenacted bill containing an auction exemption identical to that of Section 647 of the ORBIT Act,²⁹ expresses concern for the effect that auctions could have on the viability and availability of global and international satellite services.³⁰ The Committee indicated that an auctions exemption could help such service providers avoid

²⁷ We note that in the *Part 100 R&O* the Commission clarified the definition of DBS service by referencing the specific frequencies used for DBS service. Thus, in defining the DBS service, the Commission stated that "[t]he following frequencies are available for use by the Direct Broadcast Satellite service: 12.2-12.7 GHz." See *Part 100 R&O*, 17 FCC Rcd at 11344, ¶ 21, and Appendix B; see also 47 C.F.R. §§ 25.201 and 25.202(a)(7).

²⁸ The ITU rules apportion spectrum and orbit locations for the BSS in various geographic regions in certain planned frequency bands. The provisions of Appendices 30 and 30A of the International Radio Regulations are applicable to the BSS in the frequency bands 11.7-12.2 GHz (Region 3), 11.7-12.5 GHz (Region 1) and 12.2-12.7 GHz (Region 2), and to their associated feeder-links in the bands 14.5-14.8 GHz (Regions 1 and 3) and 17.3-17.8 GHz (Region 2). The Region 2 orbit locations are governed by specific procedures contained in the ITU BSS and associated feeder-link Plans, and these procedures apply specifically to DBS in the 12.2-12.7 GHz frequency band and to a DBS system's associated feeder-links. Other BSS allocations are not subject to the provisions of these Plans.

²⁹ See Communications Satellite Competition and Privatization Act of 1998, H.R. 1872, 105th Cong., 2d Sess. § 649 (1998).

³⁰ Report of Committee on Commerce, Communications Satellite Competition and Privatization Act of 1998, H.R. Rep. No. 494, 105 Cong., 2d Sess. 64-65 (1998). See also Report on the Activity of the Committee on Commerce for the 106th Congress, H.R. Rep. 106-1047 at 38. (Jan. 2, 2001) (stating that the bill prohibits the Commission from auctioning orbital slots or spectrum assignments for global satellite systems).

financial burdens they might otherwise face if a U.S. auction regime precipitated a succession of auctions in numerous countries in which the operators might seek to provide service. The auctioning of U.S. DBS licenses that comply with the ITU Region 2 Band Plan does not raise these concerns because these licenses are for channels designed under the Plan to serve the United States.

15. Second, Northpoint's conjectures about the possibility of DBS licensees providing a full-fledged international service are flawed. For example, visibility of a portion of the Pacific rim from orbit locations assigned to the United States does not make service provided from these locations an international service.³¹ Satellite beams, because of a natural spread in their radiation characteristics, will illuminate beyond the borders of a particular country. Thus, in order to have full coverage of a national territory, coverage of regions beyond those borders is to be expected. We agree with Northpoint that treaty obligations of the United States under the International Radio Regulations help define and limit the scope and nature of DBS. The "coverage" maps referred to by Northpoint show areas of the world that are visible from certain orbit locations. They do not, however, show the actual coverage areas of those orbit positions as defined in the ITU Region 2 Band Plan. For coverage beyond that described in the ITU Region 2 Band Plan, a modification to the Plan, including further modifications of allocations currently in the Plan, would be required. Thus, if a licensee wishes to provide service outside the United States, inconsistent with the ITU Region 2 Band Plan, it must obtain a modification to the Plan. Obtaining a modification of the Region 2 Band Plan, especially for coverage beyond that of the original Plan, is a process that has no guarantee of success, as it requires the agreement of other administrations that have DBS assignments that may be affected by the modification.³² An increase in interference level as little as 0.25 dB can result in an administration not giving its agreement.³³ Thus, the DBS licenses that are slated for auction cannot now be – nor are they anticipated to be – used to provide any significant degree of international service.

16. We also do not agree that in *DISCO I* the Commission deemed DBS to be a "truly" international satellite communications service. Rather, in *DISCO I*, the Commission concluded that it should not impose regulatory barriers on a licensee interested in providing DBS service outside the United States. Specifically, *DISCO I* permitted DBS licensees to provide both domestic and international

³¹ Visibility refers to the area of the earth's surface that is visible from the satellite, whereas coverage refers to the area of the earth's surface that the satellite antenna beams are capable of illuminating. Coverage may be limited by satellite design or for regulatory reasons.

³² This process is initiated by the U.S. Administration submitting the modification to the ITU or by agreement. Changes to the plan are required to be made through a process defined in the International Radio Regulations Appendices 30 and 30A. The procedure must follow the process described in Articles 4 and 5 of these Appendices.

³³ The process requires interaction between the administrations and may, if issues are not resolved, require the assistance of the ITU Radio Communication Bureau to offer solutions. The process, however, may fail to result in an agreement because the entity whose agreement being sought is not required to give its agreement in the allotted eight year time frame. If no agreement is reached, the modification may be lost at the end of the eight year allotted time frame to complete the coordination and notification process. Further, the Pacific rim areas noted by Northpoint would require additional submissions to the ITU beyond that of a Region 2 plan modification, as they are not part of the Region 2 Band Plan. These areas are located in Region 1 (Russia) and Region 3. For example, operation in the 12.2 – 12.5 GHz band over the territory of Russia would require modification of the Region 1 Band Plan.

service without obtaining additional approval from the Commission.³⁴ While the Commission noted the potential advantages of international DBS service, it did not conclude that such service would be anything other than incidental to domestic service.³⁵ This decision also did not change the obligation of DBS licensees proposing to provide service outside the United States to submit the appropriate submissions to the ITU for modifications to the Region 2 Band Plan. We note also that, as a practical matter, in the almost eight years that have passed since the adoption of *DISCO I* in 1996, there have been only four proposals to provide DBS service beyond the U.S. borders using an orbit location assigned to the United States under the ITU Region 2 Band Plan, and only two of these proposals have been submitted to the ITU.³⁶ We also note that currently all U.S.-licensed providers of DBS service are providing service only to the United States and not to any foreign countries. Their DBS signals originate in the United States, under control of the DBS provider, are transmitted over U.S.-licensed satellites, and are received by individual earth station antennas located at the U.S. subscribers' premises. In contrast, many U.S.-licensed FSS satellites serve the international market. Signals originating in the United States may be transmitted through these FSS satellites to foreign points and vice versa. Typically, these services are between the United States and points in Central and South America, Europe, and the Far East. Thus, our conclusion that DBS service from the eight orbit locations assigned to the United States is predominantly domestic is consistent with actual service offerings and does not represent a departure from *DISCO I*.

17. Northpoint's assertion that the Commission routinely obtains modifications of the ITU Region 2 Band Plan is misleading.³⁷ The Commission has indeed requested modifications of the ITU

³⁴ See *DISCO I*, 11 FCC Rcd at 2439-40, ¶ 70 (foreign approval required for international operations, consistent with international treaties). We note, however, that the Commission would have to submit the appropriate modification to the Plan and seek agreement to the Region 2 Band Plan.

³⁵ See *id.* at 2439, ¶¶ 66-67.

³⁶ One of these proposals was that of Northpoint's affiliate Compass Systems, Inc. ("CSI"), which, on March 20, 2002, filed an application for authority to construct a DBS system in which it proposed to serve Canada, Mexico, and "the Asia-Pacific region" in addition to the United States. Compass Systems, Inc., Application for Authority to Construct a Direct Broadcast Satellite System (filed Mar. 20, 2002). No Plan modification was submitted to the ITU because this application was dismissed as unacceptable for filing by the International Bureau ("IB") and WTB on March 3, 2003. Letter from Donald Abelson, Chief, International Bureau, and John B. Muleta, Chief, Wireless Telecommunications Bureau, to Antoinette Cook Bush, Vice President, Compass Systems, Inc. (dated March 3, 2003). CSI has filed an Application for Review of this dismissal. Compass Systems, Inc., Application of Compass Systems, Inc. for Authority to Construct an International Direct Broadcast Satellite System, Application for Review (filed April 2, 2003). The second proposal was made by EchoStar, which has proposed to use one of the 15 transponders of its EchoStar 7 satellite for service to Mexico. See EchoStar Satellite Corporation, Application for Minor Modification of Direct Broadcast Satellite Authorization, Launch and Operating Authority for EchoStar 7, *Order and Authorization*, 17 FCC Rcd 894 (2002) ("*EchoStar 7 Order*"). The third proposal was also made by EchoStar and involved a request for modification to the BSS Plan for USABSS-3 and 4 that would include coverage to Mexico from the 119° W.L. orbit location. See Letter from Richard B. Engelman, Chief, Planning and Negotiation Division, International Bureau, Federal Communications Commission, to the International Telecommunication Union Radiocommunication Bureau (dated November 4, 1999). EchoStar has since relocated these satellites from the 119° W.L. orbit position. The fourth proposal involved a request by EchoStar to serve Asian markets from the 175° W.L. orbit location. See EchoStar Satellite Corporation, Consolidated Request for Additional Time to Commence Operation, SAT-MOD-19981125-00089; SAT-MOD-19981125-00091; and SAT-MOD-19981125-00092 (filed November 25, 1998). We note, however, that EchoStar did not implement this proposal and no Plan modification was submitted to the ITU.

³⁷ Northpoint Comments at 7.

Region 2 Band Plan on a number of occasions. However, the cases that Northpoint cites do not support its contention that the ITU Region 2 Band Plan is an insignificant constraint on international DBS service. Most of the cases in which the Commission has sought such modifications have had nothing to do with the provision of service outside the United States. Indeed, as noted above, the Commission has sought a modification of the ITU Region 2 Band Plan on behalf of a licensee proposing to provide international service from a U.S. orbit location in only two instances.³⁸ Moreover, in certain cases that Northpoint cites, the Commission determined that the proposed variances from the technical parameters of the ITU Region 2 Band Plan would not cause interference to the radiocommunications systems of other countries, or that the potential interference of the proposed system would be less than that allowed under Appendices S30 and S30A.³⁹ We also note that SES Americom's application to provide DBS service to the United States and the Caribbean would not involve the provision of service from an orbit location assigned to the United States or a request by the United States to modify the ITU Region 2 Band Plan.⁴⁰ Thus, the cases cited by Northpoint do not demonstrate, as it suggests, that it is a routine matter for the United States to obtain a modification of the ITU Region 2 Band Plan on behalf of a U.S.-licensed DBS operator in order for such an operator to provide international service, or that the Region 2 Plan permits more than incidental service beyond the U.S. borders from orbit locations assigned to the United States.⁴¹

³⁸ See Letter from Richard B. Engelman, Chief, Planning and Negotiation Division, International Bureau, Federal Communications Commission, to the International Telecommunication Union Radiocommunication Bureau (dated November 4, 1999), in which IB filed a request for modification to the BSS Plan for USABSS-3 and 4 that includes coverage to Mexico from the 119° W.L. orbit location; and *EchoStar 7 Order*, 17 FCC Rcd at 897, ¶ 6, in which IB filed a request for modification with the ITU to allow EchoStar to use a spot beam that covers Mexico from its satellite at the 119° W.L. orbit location.

³⁹ See DIRECTV Enterprises, Inc., Application for Authority to Launch and Operate a Replacement Direct Broadcast Satellite Service Space Station, *Order and Authorization*, 14 FCC Rcd 13159, 13161, ¶ 6 (1999) ("Upon reviewing DIRECTV's application, we find sufficient evidence to determine that DBS-1R will not cause interference to other U.S. DBS systems, or to the radiocommunications systems of other countries."); DIRECTV Enterprises, Inc., Application for Modification of Direct Broadcast Satellite System and for Authorization to Relocate DBS-1 Satellite to the 109.8° W.L. Orbital Location, *Order and Authorization*, 15 FCC Rcd 6738, 6739, ¶ 5 (1999) ("DIRECTV has . . . provided analyses demonstrating its compliance with the limits contained in Annex 1 to Appendices 30 and 30A. We have reviewed this information, and we find that the potential interference level of DIRECTV's modified system is below that allowed under Appendices 30 and 30A at the 110° W.L. orbit location."). We also note that the Commission has consistently advised applicants proposing technical parameters at variance with the Region 2 Band Plan that (1) until the Plan is modified to include such technical parameters, they may not cause greater interference to other DBS or feeder-link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations, than that which would occur from the current Plan assignments; and (2) no protection from interference caused by radio stations authorized by other administrations is guaranteed unless and until Appendices S30 and S30A Plan procedures are successfully and timely completed.

⁴⁰ See SES Americom, Petition for Declaratory Ruling (filed April 25, 2002); Public Notice, *Satellite Space Applications Accepted for Filing*, Report No. SAT-00100 (May 17, 2002). Thus, the Commission's acceptance for filing of the SES Americom application does not demonstrate that DBS is an international service. To the contrary, Gibraltar, through the United Kingdom, must obtain a modification to the Region 2 Band Plan before SES Americom may provide its proposed service to the United States.

⁴¹ We note that in the case of EchoStar 8, SES Americom expressed concern that EchoStar did not include in its analyses the United Kingdom-filed modification to the Region 2 Band Plan associated with SES Americom's recent proposal to provide DBS service in the United States. The Commission conditioned operation of EchoStar 8 such that, until the Region 2 Band Plan and its associated Feeder Link Plan are modified to include EchoStar 8's parameters, it shall not cause greater interference than that which would occur from the current USA Plan (continued....)

18. We also disagree with Northpoint's reading of our authorization of the EchoStar 7 satellite, of which one of the proposed spot beams is to be directed toward Mexico. According to Northpoint, this authorization is proof that "[a]s of last year . . . the Commission was still treating DBS as an international satellite service, despite the existence of the Region 2 Band Plan."⁴² It is important to note that our observation in this authorization that "the Commission permits DBS licensees to provide service in other countries," which Northpoint quotes, was made in the context of addressing Northpoint's and the National Association of Broadcasters' ("NAB") comments on EchoStar's application regarding the latter's compliance with the Satellite Home Viewer Improvement Act of 1999 ("SHVIA").⁴³ Northpoint had argued in its comments that if EchoStar's purpose in launching EchoStar 7 was to enhance EchoStar's capacity to provide local broadcast signals into local markets pursuant to SHVIA, then the Commission should require EchoStar to direct all of its proposed spot beams to locations within the United States.⁴⁴ In response, we noted that SHVIA does not require DBS operators to use all satellite beams for local-into-local service, that Commission policy allows satellite operators flexibility in the technical design of their space stations to best implement their business plans, and that the Commission permits DBS licensees to provide DBS service in other countries, in accordance with U.S. treaty obligations, provided the satellite operator obtains all necessary approvals from the foreign administration.

19. We note also that the EchoStar 7 satellite was designed to provide service to the United States, including Alaska and Hawaii, on its assigned channels.⁴⁵ The EchoStar 7 satellite included in addition a spot beam directed toward Mexico.⁴⁶ EchoStar could not technically direct this particular spot beam into the United States without causing harmful self-interference into other spot beams in its own fleet, and it therefore decided to direct the spot beam toward Mexico, where it may be used if EchoStar decides to provide service to Mexico and obtains any necessary authority from the Mexican

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_____ assignments at 110° W.L. to other DBS or feeder-link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations. These conditions require EchoStar to seek the agreement of any Administration having an affected Region 2 Band Plan assignment or prior-filed Plan modification, unless and until the Region 2 Band Plan and its associated Feeder Link Plan are modified to include EchoStar 8's parameters. EchoStar Satellite Corporation, Application for Minor Modification of Direct Broadcast Satellite Authorization, Launch and Operating Authority for EchoStar 8, *Order and Authorization*, 17 FCC Rcd 11326, 11328-29, ¶ 7. Thus, even in the case of a proposed satellite that will serve only the United States, it is not a foregone conclusion that the satellite will be able to operate using technical parameters that are at variance with the Region 2 Band Plan. This case certainly does not support Northpoint's claim that the Region 2 Band Plan is more of a procedural hurdle than a substantive constraint on DBS operations. See Northpoint Comments at 9.

⁴² Northpoint Comments at 7, citing *EchoStar 7 Order*, 17 FCC Rcd at 896, ¶ 5.

⁴³ *EchoStar 7 Order*, 17 FCC Rcd at 896, ¶¶ 4-5. See also SHVIA, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-526 to 1501A-545 (November 29, 1999), codified at 47 U.S.C. § 338.

⁴⁴ Petition of Northpoint Technology, Ltd., and Broadwave USA, Inc., to Stay Proceedings Pending Disclosure and Analysis of Data Regarding Planned Signals, File Nos. SAT-MOD-20010810-00071 & SAT-A/O-20010810-00073 (September 24, 2001), at 3.

⁴⁵ *EchoStar 7 Order*, 17 FCC Rcd at 896, ¶ 5.

⁴⁶ *Id.*

Administration to do so.⁴⁷ In sum, in authorizing the launch and operation of EchoStar 7, we did not treat DBS as an international satellite service.⁴⁸ Rather, we merely disagreed with Northpoint's and NAB's suggestion that EchoStar should be required to direct all of its proposed spot beams to locations within the United States.⁴⁹

20. Finally, without addressing Northpoint's assertion that NGSO FSS is "indubitably" an international or global satellite communications service, we disagree with its argument that the ORBIT Act prohibits auctions of DBS licenses because DBS relies on spectrum that is "used for the provision of" NGSO FSS. Northpoint has already made this same argument with respect to the auctioning of Multichannel Video Distribution and Data Service ("MVDDS") licenses, and the Commission has rejected it.⁵⁰ Thus, Northpoint has previously asserted, as it does here, that the ORBIT Act's denial of auction authority can be based on the nature of the use made by operators in other services of the spectrum to which the applicant seeks access, and is not limited to the nature of the use made by the service that will be subject to auction. We find this argument unpersuasive, as we did in the *MVDDS*

⁴⁷ The United States reached agreement with Mexico and Argentina to permit DBS and direct-to-home ("DTH") service to each other's territories. Such service may be provided if all necessary modifications to the ITU Region 2 Band Plan are obtained. See Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services in the United States of America and United Mexican States (November 8, 1996), Article VI. See also Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services and Fixed-Satellite Services in the United States of America and the Argentine Republic (June 5, 1998).

⁴⁸ Moreover, we conditioned operation of EchoStar 7 such that, until the Region 2 Band Plan and its associated Feeder Link Plan are modified to include EchoStar 7's parameters, it shall not cause greater interference than that which would occur from the current USA Plan assignments at 119° W.L. to other BSS or feeder-link assignments, or other services or satellite systems, operating in accordance with the ITU Radio Regulations. Thus, we limited EchoStar 7's operations to ensure its compliance with the Region 2 Band Plan, and we made no assumptions about whether the Band Plan will in fact be modified to allow EchoStar 7 to serve Mexico.

⁴⁹ Northpoint also cites our statement in footnote 216 of the *MVDDS Second R&O* to the effect that "in general, the DBS satellites have characteristics that require modification to the [Band] Plan assignments." Northpoint Comments at 7, citing Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9652, ¶ 87 n.216 ("MVDDS Second Report and Order"), appeal filed, Northpoint Technology, Ltd., et al. v. FCC, Nos. 02-1194 and 02-1195 (D.C. Cir. filed June 21, 2002). The Commission made this statement in the context of its discussion of plans for correcting any impermissible interference with DBS that MVDDS licensees might cause, and the statement had nothing to do with modifications of the ITU Region 2 Band Plan for purposes of international DBS service. Moreover, Northpoint fails to quote the rest of this statement, which reads as follows: "These assignment modifications have to be coordinated through the Appendix 30 process with other affected assignments and accepted into the Plan before they can be protected from the existing and future fixed services. Hence, it is more efficient to implement sharing and protection guidelines between the fixed service and these modified DBS assignments as outlined herein rather than wait for the outcome of the ITU coordination process, which is not guaranteed." Thus, the Commission stressed in its statement that modifications of the ITU Region 2 Band Plan may be difficult to obtain and certainly cannot be counted on.

⁵⁰ See *MVDDS Second R&O*, 17 FCC Rcd at 9706-07, ¶¶ 242-244.

Second R&O. As we explained there, we interpret the language of the statutory prohibition to focus on whether the particular spectrum being “assigned” is “used for” international or global satellite communications services.⁵¹ The spectrum licenses at issue here would be “assigned” by competitive bidding to licensees only for DBS service provided from U.S. orbit locations, which are limited almost exclusively to domestic use. Because NGSO FSS and DBS licenses are assigned entirely separately, there is no reason to read the ORBIT Act to constrain the DBS license assignments merely because NGSO FSS shares the same spectrum band.

21. In sum, we continue to believe that Section 647 of the ORBIT Act does not prohibit us from using auctions to assign licenses for DBS channels at the eight orbit locations assigned to the United States under the ITU Region 2 Band Plan, because we find that the DBS service authorized under such licenses is not an “international or global satellite communications service.” Under the technical parameters of the ITU Region 2 Band Plan, these licenses are designed to provide service almost exclusively to the United States, and modifications of the Region 2 Band Plan are not obtained as a matter of routine. We may submit a modification, but may not be able to get the necessary agreements with other affiliated Administrations. Although the Commission removed its own regulatory obstacles to the provision of DBS service outside the United States from the U.S. orbit locations in *DISCO I*, that decision had no effect on DBS operators’ obligation to comply with the ITU Region 2 Band Plan. Therefore, we find that *DISCO I* should not be read to mean that the DBS licenses that we intend to assign by competitive bidding are to be used to provide an international satellite service, or to establish a basis for concluding that the prohibition of the ORBIT Act should apply to such U.S.-assigned DBS licenses. We therefore conclude that the Commission has the authority to auction the DBS licenses included in Auction No. 52, as well as any other licenses for DBS channels at the eight orbit locations assigned to the United States under the current ITU Region 2 Band Plan that may become available in the future.

B. Eligibility for the Three Available Western DBS Licenses

1. The Public Notice

22. In the Auction No. 52 *Comment Public Notice*, we sought comment on various questions regarding possible eligibility restrictions for the licenses that were identified for inclusion in Auction No. 52. Noting that in several services the Commission has determined that an eligibility restriction may be imposed only when there is significant likelihood of substantial harm to competition in specific markets and when the restriction will be effective in eliminating that harm, we sought comment on the use of that standard for this service. Observing also that one of the four licenses scheduled for auction—the license at the 61.5° W.L. location—authorizes the use of only two channels, we sought comment on whether this fact warrants any modification of our existing open eligibility regime for the DBS service. More specifically, we requested comment on whether we should adopt the eligibility criteria for this particular license that Rainbow DBS had proposed in the application it filed on July 3, 2002, to modify its DBS authorization to add these two unassigned channels.⁵² We also asked whether the Commission should

⁵¹ *Id.* at 9707, ¶ 244.

⁵² Thus, we requested comment on (1) whether the applicant should be an existing permittee at the 61.5° W.L. location; (2) whether the channels should be assigned to an applicant that holds no other DBS channel resources capable of serving the continental United States; and (3) whether the applicant should be required to demonstrate an ability to launch in the near future. Rainbow DBS’s modification application was dismissed on other grounds. *See* Letter from Donald Abelson, Chief, International Bureau, and John B. Muleta, Chief, Wireless (continued....)

consider eligibility restrictions on particular orbit locations based on entities' market position in the provision of terrestrial multichannel video programming. Finally, we sought comment on any other proposed eligibility requirements for each of the orbit locations, including the rationale for any such requirements.⁵³

2. Comments

23. Two parties, Rainbow DBS and EchoStar, submitted comments on the issue of eligibility restrictions, and both focused their comments on the question of whether the Commission should restrict eligibility for the license for the two available channels at the 61.5° W.L. orbit location. Rainbow DBS, the licensee of 11 channels at 61.5° W.L., supports the adoption of the three eligibility criteria for the 61.5° W.L. license on which the Commission sought comment and which, as noted above, Rainbow DBS itself had proposed.⁵⁴ EchoStar, which is also the licensee of 11 channels at 61.5° W.L., opposes the adoption of Rainbow DBS's proposed eligibility restrictions for the 61.5° W.L. license.⁵⁵ No commenter addressed with any specificity the question of whether eligibility requirements should be considered for any of the other three available DBS licenses.

3. Analysis

24. We decline to adopt any eligibility restrictions for the three available DBS licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations. In the *Part 100* proceeding, we considered a wide range of questions relating to whether ownership restrictions of any kind are appropriate for the DBS service, and we concluded that generally they were not. Thus, we examined whether we should adopt any limits on the ownership of satellites located at more than one full-CONUS orbit position; whether we should adopt cable/DBS cross-ownership restrictions; and whether we should be concerned about non-ownership relationships such as leases of DBS satellite transponders.⁵⁶ After careful consideration of the record on these issues, we declined to adopt any specific restrictions.⁵⁷

25. No commenter proposed any eligibility restrictions for the available licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations. This results in a record that lacks information regarding circumstances that would cause us to impose eligibility restrictions in the DBS service with respect to these three licenses. Therefore, based on the record before us, we conclude that there is no reason for us to deviate from any of our decisions in the *Part 100 R&O* as they apply to these licenses.

26. On the other hand, we have received detailed comments presenting a number of arguments regarding the issue of whether we should adopt eligibility restrictions for the available license at 61.5° W.L. In order to avoid delaying a decision on the three western licenses, we will address the matter of
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Telecommunications Bureau, to David Deitch, General Counsel and Senior Vice President, R/L DBS Company, LLC (dated March 3, 2003).

⁵³ *Auction No. 52 Comment Public Notice*, 18 FCC Rcd at 3480-81.

⁵⁴ Rainbow DBS Comments at 3.

⁵⁵ EchoStar Comments at 2.

⁵⁶ *See Part 100 R&O*, 17 FCC Rcd at 11332, 11379, 11397, 13398, ¶¶ 2, 104, 140, 141, 144.

⁵⁷ *Id.* at 11337, 11396, 11397, ¶¶ 2, 140, 141, 144.

eligibility for the 61.5° W.L. license in a separate order, which we will issue as soon as we resolve the relevant issues that have been raised with respect to that license. We emphasize that the decision we reach today applies only to the three licenses for the available channels at the 175° W.L., 166° W.L., and 157° W.L. orbit locations, and we leave open the question of whether particular circumstances might warrant different eligibility rules for the available license at 61.5° W.L.

IV. CONCLUSION

27. For the reasons stated above, we conclude that the Commission has the authority to auction DBS licenses for the use of channels at the eight orbit locations to which the United States is assigned under the ITU Region 2 Band Plan. We conclude that this authority has not been altered or diminished by the Commission's adoption of *DISCO I* or the enactment of Section 647 of the ORBIT Act. We also conclude that no eligibility restrictions on the available DBS licenses at the 175° W.L., 166° W.L., and 157° W.L. orbit locations are warranted, and we will maintain our policy of open eligibility for these licenses. We reach no conclusions concerning whether we should impose any eligibility restrictions on the license for the two unassigned channels at the 61.5° W.L. orbit location and defer the resolution of that issue to a separate order.

V. ORDERING CLAUSE

28. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), this Order is hereby ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX: EX PARTE FILINGS

The following ex parte filings have been made:

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated March 10, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated April 2, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated April 10, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Jane Mago, Federal Communications Commission (dated April 10, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated April 24, 2003)

Letter from Howard J. Symons, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated May 6, 2003)

Letter from Howard J. Symons, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated March 15, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated June 20, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated June 20, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated June 20, 2003)

Letter from Christopher R. Bjornson, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 16, 2003)

Letter from Benjamin J. Griffin, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 17, 2003)

Letter from Benjamin J. Griffin, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 17, 2003)

Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 31, 2003)

Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 1, 2003)

Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 5, 2003)

Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 12, 2003)

Letter from Howard J. Symons, Counsel for Rainbow DBS, to Jane Mago, Federal Communications Commission (dated August 12, 2003)

Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 13, 2003)

Letter from David R. Goodfriend, Director, Legal and Business Affairs, EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 25, 2003)

Letter from David R. Goodfriend, Director, Legal and Business Affairs, EchoStar Satellite Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated August 27, 2003)

Letter from Howard J. Symons, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 7, 2003)

Letter from Howard J. Symons, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 8, 2003)

Letter from Margaret L. Tobey, Counsel for Satellite Broadcasting and Communications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 9, 2003)

Letter from Margaret L. Tobey, Counsel for Satellite Broadcasting and Communications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 9, 2003)

Letter from Margaret L. Tobey, Counsel for Satellite Broadcasting and Communications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 9, 2003)

Letter from Howard J. Symons, Counsel for Rainbow DBS, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 21, 2003)