

EHOSTAR COMMUNICATIONS CORP

Form S-8

October 26, 2007

As filed with the Securities and Exchange Commission on October 26, 2007

Registration No. 333-[_____]

**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

EHOSTAR COMMUNICATIONS CORPORATION

(Exact name of issuer as specified in its charter)

Nevada
(State or Other Jurisdiction of
Incorporation)

88-0336997
(I.R.S. Employer
Identification No.)

9601 S. Meridian Blvd.
Englewood, Colorado 80112
(Address of principal executive
offices)

Sling Media, Inc. 2004 Stock Plan

(Full title of Plans)

R. Stanton Dodge

Executive Vice President, General Counsel and Secretary

EchoStar Communications Corporation

9601 S. Meridian Blvd.

Englewood, Colorado 80112

(303) 723-1000

(Name, address and telephone number of agent for service)

CALCULATION OF REGISTRATION FEE

Plans/Title of Securities to be Registered(1)	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Class A Common Stock, par value \$0.01 per share	409,417 shares	\$2.90	\$1,189,177	\$36.51

- (1) 409,417 shares of Class A Common Stock, par value \$0.01 per share, of EchoStar Communications Corporation, a Nevada corporation (Shares), are being registered hereunder. Such number of Shares represents the aggregate number of Shares issuable pursuant to the Sling Media, Inc. 2004 Stock Plan (the Stock Plan), which is being assumed by EchoStar Communications Corporation (the Registrant) in connection with the merger of EchoStar Technologies New Media Corporation, a wholly owned subsidiary of the Registrant (Merger Sub), with and into Sling Media, Inc. (the Merger) in respect of unvested awards or rights issued under the Stock Plan. The number of Shares subject to outstanding awards or rights under the Stock Plan as of the closing of the Merger has been calculated pursuant to an exchange ratio set forth in the Agreement and Plan of Merger, dated as of September 17,

2007, by and among the Registrant, Merger Sub, Sling Media, Inc. and Katsujin David Chao, as Stockholders Representative (the Merger Agreement). Pursuant to Rule 416 under the Securities Act of 1933, as amended (the Securities Act), the amount registered hereunder includes an indeterminate number of Shares that may be issued in accordance with the provisions of the Stock Plan in connection with any anti-dilution provisions or in the event of any change in the outstanding Shares, including a stock dividend or stock split.

- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) and (h) of the Securities Act, based upon the weighted average exercise price per share (\$2.90) with respect to outstanding awards under the Stock Plan.
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PART I
INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information

Not required to be filed with this Registration Statement.

Item 2. Registrant Information and Employee Plan Annual Information

Not required to be filed with this Registration Statement.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents, which have heretofore been filed by the Registrant with the Securities and Exchange Commission (the SEC) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference into this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for its fiscal year ended December 31, 2006;
- (b) The Registrant's Quarterly Reports on Form 10-Q for the quarters ended March 31, 2007 and June 30, 2007;
- (c) The Registrant's Current Reports on Form 8-K filed on January 16, 2007, February 15, 2007, June 4, 2007 and September 25, 2007;
- (d) The Registrant's Definitive Proxy Statement on Schedule 14A filed with the SEC on April 5, 2007; and
- (e) The description of the Registrant's Class A Common Stock contained in the Registrant's Registration Statement on Form 8-A, declared effective June 20, 1995 by the SEC, pursuant to Section 12 of the Exchange Act.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement on Form S-8 and prior to such time as the Registrant files a post-effective amendment to this Registration Statement on Form S-8 that indicates that all securities offered hereby have been sold, or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing such reports and documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently-filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement.

Item 4. Description of Securities

Not applicable.

Item 5. Interests of Named Experts and Counsel

The validity of the securities being registered hereunder is being passed upon for the Registrant by R. Stanton Dodge. As of October 9, 2007, Mr. Dodge owned, directly and indirectly, 50,765 shares of Class A

Common Stock which includes the right to acquire 48,440 additional shares of the Registrant's Class A Common Stock within 60 days of October 9, 2007.

The consolidated financial statements of the Registrant appearing in the Registrant's Annual Report (Form 10-K) for the year ended December 31, 2006, and the Registrant's management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2006 included therein, have been audited by KPMG LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference. The audit report covering the December 31, 2006 consolidated financial statements refers to the adoption of Securities and Exchange Staff Commission Staff Accounting Bulletin (SAB) No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in the Current Year Financial Statements*, and to the adoption of Statement of Financial Standards No. 123 R, *Share-Based Payment*. Such consolidated financial statements and management's assessment are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

Item 6. Indemnification of Directors and Officers

Chapter 78.7502(1) of the Nevada Revised Statutes allows the Registrant to indemnify any person made or threatened to be made a party to any action (except an action by or in the right of the Registrant, a derivative action), by reason of the fact that he is or was a director, officer, employee or agent of the Registrant, or is or was serving at the request of the Registrant as a director, officer, employee or agent of another corporation, against expenses including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in a good faith manner which he reasonably believed to be in or not opposed to the best interests of the Registrant, and, with respect to any criminal proceeding, had no reasonable cause to believe that his conduct was unlawful. Under chapter 78.7502(2), a similar standard of care applies to derivative actions, except that indemnification is limited solely to expenses (including attorneys' fees) incurred in connection with the defense or settlement of the action and court approval of the indemnification is required where the person is seeking advance payment of indemnifiable expenses prior to final disposition of the proceeding in question. Under chapter 78.751, decisions as to the payment of indemnification are made by a majority of the Board of Directors at a meeting at which quorum of disinterested director is present, or by written opinion of special legal counsel, or by the stockholders.

Provisions relating to liability and indemnification of officers and directors of the Registrant for acts by such officers and directors are contained in Article IX of the Amended and Restated Articles of Incorporation of the Registrant, Exhibit 4.1 hereto, and Article IX of the Registrant's Bylaws, Exhibit 4.2 hereto, which are incorporated by reference. These provisions state, among other things, that, consistent with and to the extent allowable under Nevada law, and upon the decision of a disinterested majority of the Registrant's Board of Directors, or a written opinion of outside legal counsel, or the Registrant's stockholders: (1) the Registrant shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Registrant) by reason of the fact that he is or was a director, officer, employee, fiduciary or agent of the Registrant, or is or was serving at the request of the Registrant as a director, employee, fiduciary or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he conducted himself in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Registrant, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; and (2) the Registrant shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Registrant to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, fiduciary or agent of the Registrant, or is or was serving at the request of the Registrant as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Registrant and except that no indemnification shall be made in respect

to any claim, issue or matter as to which such person shall have adjudged to be liable for negligence or misconduct in the performance of his duty to the Registrant unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

See Index to Exhibits on page 7.

Item 9. Undertakings

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that:

paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by these paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's Annual Report pursuant to section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the

registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

- (c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Englewood, State of Colorado, on October 26, 2007.

**EHOSTAR COMMUNICATIONS
CORPORATION**

By /s/ R. Stanton Dodge
Name: R. Stanton Dodge
Title: Executive Vice President, General
Counsel and Secretary

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POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints R. Stanton Dodge as the true and lawful attorney-in-fact and agent of the undersigned, with full power of substitution and re-substitution, for and in the name, place and stead of the undersigned, in any and all capacities, to sign any and all amendments (including without limitation, post-effective amendments) or supplements thereto and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants unto the attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith as fully as to all intents and purposes as the undersigned might or could do in person, thereby ratifying and confirming all that the attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title	Date
/s/ Charles W. Ergen Charles W. Ergen	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	October 26, 2007
/s/ Bernard L. Han Bernard L. Han	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	October 26, 2007
/s/ Carl E. Vogel Carl E. Vogel	Director, President and Vice Chairman	October 26, 2007
/s/ James DeFranco James DeFranco	Director and Executive Vice President	October 26, 2007
/s/ David K. Moskowitz David K. Moskowitz	Director and Senior Advisor	October 26, 2007
/s/ Michael T. Dugan Michael T. Dugan	Director and Senior Advisor	October 26, 2007
/s/ Cantey Ergen Cantey Ergen	Director	October 26, 2007
/s/ Steven R. Goodbarn Steven R. Goodbarn	Director	October 26, 2007
/s/ Gary S. Howard Gary S. Howard	Director	October 26, 2007
/s/ Tom A. Ortolf Tom A. Ortolf	Director	October 26, 2007
/s/ C. Michael Schroeder C. Michael Schroeder	Director	October 26, 2007

INDEX TO EXHIBITS

Exhibit Number	Description
4.1	Amended and Restated Articles of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1(a) on the Quarterly Report on Form 10-Q of the Registrant for the quarter ended June 30, 2003, Commission File No. 0-26176).
4.2	Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.1 on the Quarterly Report on Form 10-Q of the Registrant for the quarter ended March 31, 2007, Commission File No. 0-26176).
4.3	Sling Media, Inc. 2004 Stock Plan*
5.1	Opinion of R. Stanton Dodge (opinion re: legality)*
23.1	Consent of R. Stanton Dodge (included in Exhibit 5.1 hereto)*
23.2	Consent of KPMG LLP*
24	Power of Attorney (set forth on the signature page of this Registration Statement)*

* Filed herewith.