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Federal Communications Commission
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Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, S.W.
Washington, DC 20554

Policy Branch
International Bureau

Re: EchoStar Satellite Corporation, File Nos. 167-SAT-P/LA-95; 168-SAT-P/LA-95; 54-SAT-AMEND-96; SAT-MOD-20010608-00055; SAT-AMD-20030127-00003; 36-DSS-LA-94; 37-DSS-P/LA-94; 154-SAT-AMEND-95; SAT-MOD-20010608-00054; SAT-AMD-20030127-00004

Dear Ms. Dortch:

EchoStar Satellite Corporation ("EchoStar") hereby provides for the public record of this proceeding additional information concerning the above-captioned application, including questions related to control over the EchoStar IX satellite and specifically over the Telemetry, Tracking and Command ("TT&C") operations of the EchoStar IX satellite.

As the Commission is aware, the EchoStar IX satellite is a hybrid Ku-band and Ka-band Fixed-Satellite Service ("FSS") satellite that will operate at the 121° W.L. orbit location, and is now set for launch in May 2003 from a floating platform at the Equator aboard a Sea Launch rocket. The satellite is scheduled for shipment to Long Beach, California, the launch platform's departure point, no later than March 31, 2003. The spacecraft is also equipped with a C-band payload. EchoStar will operate the Ku-band and Ka-band payloads on the satellite pursuant to the modifications to its space station authorizations that are requested in the above-captioned applications. Loral will operate the C-band payload, known to the Commission as Telstar 13, on the satellite pursuant to authorization from Papua New Guinea using that country's PACSTAR-L4 network ITU filing at the 121° W.L. orbit

location.¹ The TT&C operations will be in the Ku-band frequencies.²

EchoStar IX will be under the direction and control of EchoStar, subject to the jurisdiction of the FCC, and operated in a manner consistent with FCC precedent and the international obligations of the United States.³ Specifically, the relationship between EchoStar and Loral is governed by an agreement between the two companies dated February 22, 2000, which EchoStar has already filed with the Commission subject to a request for confidential treatment.⁴ The Agreement provides that EchoStar and Loral each shall exclusively own and operate their respective communications payloads, and have exclusive decision-making authority with respect to operation of these payloads. In addition, EchoStar maintains a majority ownership interest in the common elements of the EchoStar IX satellite such as the spacecraft bus. The Agreement also establishes that Loral will provide TT&C services to EchoStar for the EchoStar IX satellite under the same 1996 contract whereby Loral has already provided TT&C services for many of EchoStar's licensed satellites. Thus, there is nothing new here about EchoStar IX's TT&C operations, which will be subject to EchoStar's direction and control. While in general EchoStar and Loral must mutually agree on all matters involving the spacecraft's common elements, the agreement also provides certain unilateral rights. Thus, in cooperation and consultation with the other party, either party may cause a move of the satellite by delivering a substitute satellite to the 121° W.L. orbital location (which delivery would, of course, be subject to Commission approval); and each party may choose to turn off its payload and abandon its usage. The Agreement further requires Loral to assist EchoStar in various

¹ See Loral SpaceCom Corporation Petition for Declaratory Ruling for Inclusion of Telstar 13 C-Band Satellite at 121° W.L. on the Permitted Space Station List, File No. SAT-PDR-20020315-00025 (filed March 15, 2002).

² See, e.g., Application for Minor Modification of Authorization to Construct, Launch and Operate a Ka-Band Satellite in the Fixed-Satellite Service, 167-SAT-P/LA-95; 168-SAT-P/LA-95; 54-SAT-AMEND-96, SAT-MOD-20010608-00055 (filed June 8, 2001) at Exhibit 2. Some tracking functions will occur in the C-band.

³ The general discussion set forth herein should not be construed as a waiver of EchoStar's previous request for confidential treatment. See Letter from Pantelis Michalopoulos to William F. Caton, File Nos. 167-SAT-P/LA-95; 168-SAT-P/LA-95; 54-SAT-AMEND-96 (dated March 29, 2002). For the reasons set forth in that request, the specific language and provisions of the Agreement should continue to be afforded confidential treatment. See *id.*

⁴ See Letter from Pantelis Michalopoulos to Jennifer M. Gilsenan, File Nos. 167-SAT-P/LA-95; 168-SAT-P/LA-95; 54-SAT-AMEND-96 (dated March 29, 2002) at Attachment (the "Agreement").

requirements imposed by the Commission on U.S. licensees, including applications and technical filings. Further, as the attached Declaration from Loral confirms, Loral will help EchoStar comply with its TT&C responsibilities as a U.S. licensee. Finally, the Agreement requires the parties to comply with all applicable laws and regulations including applicable FCC rules, policies and orders.

EchoStar IX will be under the direction and control of EchoStar, will be subject to the U.S. jurisdiction, and will be operated in accordance with applicable FCC rules, policies and orders. Furthermore, EchoStar will comply with the Commission's wishes regarding registration of EchoStar IX with the United Nations' Committee on the Peaceful Uses of Outer Space ("UNCOPUOS") Office of Outer Space Affairs ("UNOOSA") pursuant to the United Nations Convention on Registration of Objects Launched Into Outer Space.⁵

A spacecraft sharing arrangement similar to that contemplated by EchoStar and Loral (indeed, one giving the U.S. licensee fewer rights than here) has been previously authorized by the Commission. In 1998, the International Bureau authorized AMSC Subsidiary Corporation ("AMSC") to operate a satellite communications payload aboard the Canadian MSAT-1 satellite to provide L-band Mobile-Satellite Service ("MSS") in the United States.⁶ In that case, AMSC proposed to acquire a one-half interest in MSAT-1 (owned by the Canadian L-band MSS licensee, TMI Communications Company, L.P. ("TMI")), and AMSC and TMI would share the satellite to provide service independent of each other using internationally coordinated spectrum assigned by their respective national licensing authorities.⁷ AMSC would have full control of the operation of the transponders assigned to it under the satellite sharing agreement, decisions regarding the attitude and position of the satellite would be by consensus of AMSC and TMI and would be submitted to arbitration in the event of a dispute, and TT&C would be managed under contract with the joint owners by Telesat Canada.⁸

In granting AMSC the requested authority, the International Bureau specifically addressed the satellite sharing arrangement in question:

⁵ See Convention on Registration of Objects Launched Into Outer Space, 28 UST 695, TIAS 8480 (opened for signatures January 14, 1975, entered into force September 15, 1976).

⁶ See *AMSC Subsidiary Corporation*, Order and Authorization, 13 FCC Rcd 12316 (Int'l Bur. 1998).

⁷ *Id.* at ¶ 3.

⁸ *Id.*

We do not foresee any insurmountable difficulties with respect to AMSC's proposal for joint U.S.-Canadian licensing and coordination responsibility for MSAT-1. While this is the first time the Commission has been asked to "share" a satellite with another licensing administration, there appears to be nothing in the international Radio Regulations that would preclude such an arrangement. Significantly, AMSC and TMI will be operating on discrete band segments, providing a concrete delineation of responsibility between the two administrations. We will, of course, consult with the Canadian government to ensure that there is a mutual understanding of each other's responsibilities with regard to our respective requirements and obligations to operate at 106.5 degrees and 101 degrees W.L. to maintain the appropriate coordination status in accordance with the Radio Regulations. Further, we will continue to hold AMSC responsible for its use of the spectrum and will expect it to continue to comply with all relevant Commission requirements.⁹

Given the factors described above concerning the operation of the EchoStar IX satellite, the International Bureau's reasoning in the AMSC case applies with even greater force here. For example, TT&C operations for EchoStar IX will be in the U.S.-licensed Ku-band payload and under the control of EchoStar as the Commission licensee. Also, the Agreement requires EchoStar and Loral to comply with applicable laws and regulations in operating the EchoStar IX satellite, including the FCC's rules, policies and orders (such as a relocation order), and further provides certain unilateral rights concerning relocation of the satellite; whereas relocation of the MSAT-1 satellite required consensus of AMSC and TMI and was subject to arbitration in the event of a disagreement. The Agreement also confirms that EchoStar will have a majority ownership interest in the EchoStar IX satellite, whereas AMSC had only a one-half interest in MSAT-1.

Finally, EchoStar understands that Loral is preparing its response to the Commission's request for additional information concerning the licensing by Papua New Guinea of the C-band payload on the satellite, and that Loral will provide such information separately to the Commission.

In sum, the satellite sharing arrangement between EchoStar and Loral is designed to facilitate the independent operation of each party's respective communications payloads, is consistent with applicable FCC rules, policies and precedent, and with the international obligations of the United States. Accordingly, EchoStar respectfully requests that the Commission grant the above-referenced satellite applications as soon as possible to permit the

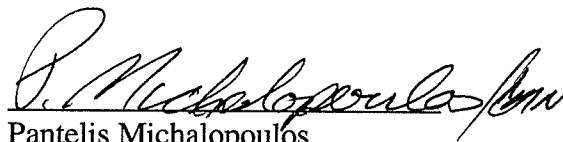
⁹ *Id.* at ¶ 17.

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timely launch and operation of the EchoStar IX satellite, and realization of the significant public interest benefits associated therewith.

Please do not hesitate to contact us if you have any questions concerning this submission.

Respectfully submitted,



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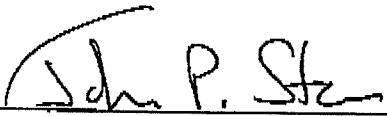
*Counsel for EchoStar Satellite
Corporation*

**DECLARATION OF JOHN STERN
ON BEHALF OF
LORAL SPACECOM CORPORATION**

I, John Stern, hereby declare under penalty of perjury that the following statements are true and correct to the best of my knowledge, information and belief:

1. I am the Deputy General Counsel, Regulatory Affairs for Loral Space & Communications Ltd., which, through an intermediate subsidiary, wholly owns and controls Loral SpaceCom Corporation (d/b/a Loral Skynet) ("Loral").
2. I understand that this Declaration is being submitted to the Federal Communications Commission ("FCC") in support of certain Ku-band and Ka-band space station modification applications filed by EchoStar Satellite Corporation ("EchoStar") relating to the EchoStar IX satellite.
3. Loral will operate the C-band payload on the EchoStar IX satellite, known to the FCC as Telstar 13, pursuant to authorization from Papua New Guinea using that country's PACSTAR-L4 network ITU filing at the 121° W.L. orbital location, and has filed a petition for declaratory ruling with the FCC to place Telstar 13 on the Permitted Space Station list.
4. Loral will provide Telemetry, Tracking and Command ("TT&C") services for EchoStar IX subject to EchoStar's direction and control as the FCC licensee. Loral will assist EchoStar in fulfilling its TT&C responsibilities as the FCC licensee for EchoStar IX. Moreover, the February 22, 2000 agreement between Loral and EchoStar provides that the EchoStar IX satellite will be operated in accordance with all applicable laws and regulations. Loral understands this requirement to include FCC rules, policies and orders.

I, John Stern, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.


John Stern

Dated: March 14, 2003