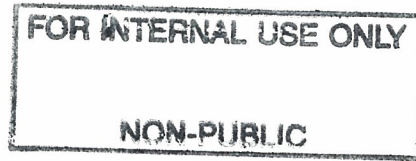


Pantelis Michalopoulos  
202.429.6494  
pmichalo@steptoe.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
Tel 202.429.3000  
Fax 202.429.3902  
steptoe.com



December 1, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
The Portals, Room TW-A325  
455 12th Street, S.W.  
Washington, D.C. 20554

FILED/ACCEPTED

DEC - 1 2008

Federal Communications Commission  
Office of the Secretary

**REQUEST FOR CONFIDENTIAL TREATMENT**

**Re: EchoStar Corporation, File Nos. SAT-LOA-20030609-00113 and SAT-AMD-20051118-00244, Call Sign S2454**

Dear Ms Dortch:

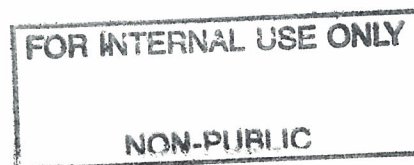
Pursuant to Sections 25.148(b) of the Commission's rules<sup>1</sup> and the Commission's order granting the above referenced applications,<sup>2</sup> EchoStar Corporation ("EchoStar") hereby submits a certification of completion of the critical design review ("CDR") milestone set forth in its authorization to operate a satellite in the Direct Broadcast Satellite ("DBS") service at 86.5° W.L.<sup>3</sup> See Attachment 1. EchoStar also is providing documentation demonstrating completion

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<sup>1</sup> 47 C.F.R. §25.148(b).

<sup>2</sup> *EchoStar Satellite L.L.C., Application to Construct, Launch, and Operate a Direct Broadcast Satellite at the 86.5° W.L. Orbital Location, Order and Authorization, 21 FCC Rcd 14045 (2006) ("86.5° W.L. Grant")*. As EchoStar has previously advised the Commission, on January 1, 2008, EchoStar Communications Corporation ("ECC") assigned several satellite space station assets previously owned by its subsidiaries, including the above referenced license, to EchoStar (the "Spin-Off"). See Public Notice, DA 07-4655 (rel. Nov. 16, 2007) (consenting to the transfer of several authorizations as part of the Spin-Off).

<sup>3</sup> See *id.* at ¶ 25.



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of the CDR for this satellite produced pursuant to EchoStar's contract with Space Systems/Loral ("SSL") (Attachment 2). This information is being provided to demonstrate that EchoStar has met the CDR milestone contained in its DBS authorization for the 86.5° W.L. orbital location.<sup>4</sup>

EchoStar notes that the antenna coverage area and certain other characteristics of the satellite set forth in the CDR may need to be modified in the process of coordinating the satellite. The Commission has contemplated precisely this possibility by imposing on EchoStar's authorization a further condition in that regard.<sup>5</sup> EchoStar is pursuing coordination negotiations with Telesat Canada, which has BSS assignments on both sides of the 86.5° W.L. authorization (82° W.L. and 91° W.L.). It appears from these negotiations that coextensive operations – i.e., EchoStar serving Canada – is not technically feasible. However, EchoStar remains optimistic that service limited to the United States (and potentially Mexico) can be successfully coordinated. The key challenge will be the level and power of service at the United States-Canada border. Modifications to satellite power level and/or alteration to the antenna coverage area to protect Canadian DBS service are under consideration.

EchoStar hereby requests that Attachment 2 be treated as confidential and not routinely available for public inspection pursuant to 47 C.F.R. §§ 0.457 and 0.459. Attachment 2 contains highly sensitive information that qualifies as commercial, financial, or technical information that "would customarily be guarded from competitors" regardless of whether or not such materials are protected from disclosure by a privilege.<sup>6</sup> In addition, the information contained in Attachment 2 includes sensitive information regarding the design and construction status of the proposed satellite that if disclosed could place EchoStar and SSL at a competitive disadvantage. Such information warrants protection under 47 C.F.R. §§ 0.457 and 0.459.<sup>7</sup> A

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<sup>4</sup> *Id.*

<sup>5</sup> *EchoStar Satellite Operating Corporation, Application to Construct, Launch, and Operate a Direct Broadcast Satellite at the 86.5° W.L. Orbital Location*, Memorandum Opinion and Order, 23 FCC Rcd 3252, at ¶¶ 20, 25 (2008).

<sup>6</sup> *See* 47 C.F.R. § 0.457(d); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("[W]e conclude that financial or commercial information provided to the Government on a voluntary basis is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.").

<sup>7</sup> 47 C.F.R. §§ 0.457, 0.459.

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cover sheet representing the redacted version of the attachment is being submitted separately for the public file, together with EchoStar's certification of compliance with the CDR milestone.

In support of this request for confidential treatment, and pursuant to 47 C.F.R. § 0.459(b), EchoStar hereby states as follows:

1. The information for which confidential treatment is sought is contained in EchoStar's submission to demonstrate compliance with its CDR milestone and includes specific information regarding the timing, payment schedules and technical criteria agreed upon with SSL with regard to the proposed satellite. As noted above, EchoStar is filing a public version of the attached materials, and this request for confidential treatment pertains only to Attachment 2, which is redacted from the public version.
2. The information is being submitted, as required under 47 C.F.R. §25.148(b), to demonstrate compliance with the CDR milestone contained in EchoStar's DBS license for the 86.5° W.L. orbital location.<sup>8</sup>
3. This information contains extremely sensitive commercial, financial, and technical information that would customarily be kept from competitors. Specifically, the information consists of details of the design and construction status of EchoStar's proposed DBS satellite, as agreed upon with SSL. EchoStar would be severely prejudiced in its ability to compete if such information were released to competitors. Moreover, SSL, too, could be prejudiced in future negotiations regarding construction of satellites if information about its arrangements with EchoStar were to be available to other satellite construction companies or to prospective purchasers of satellites.
4. The information for which non-disclosure is sought pertains to satellite services, for which other competitors have received licenses. EchoStar's competitors (as well as the competitors of SSL) stand to benefit competitively from any knowledge of the construction status, design and progress of EchoStar's proposed satellite contained in Attachment 2.
5. Disclosure of the information for which non-disclosure is sought could result in substantial harm to EchoStar and SSL by revealing to their

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<sup>8</sup> 86.5° W.L. Grant at ¶ 25.

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competitors, the satellite construction industry and the public, the design and construction status of EchoStar's proposed satellite system, as agreed-upon with SSL. Such information could be used by the competitors of EchoStar to develop competing service offerings.<sup>9</sup> Moreover, EchoStar would be prejudiced in any future negotiations regarding construction of satellites if such information were available to other satellite manufacturers.

6. EchoStar takes significant measures to ensure that the timing, payment terms and technical criteria contained in its satellite manufacturing contracts are not disclosed to the public, including confidentiality clauses in such contracts.
7. The attached material for which non-disclosure is sought is not available to the public.
8. EchoStar requests that the attached material be withheld from disclosure for an indefinite period. Disclosure of this information at any time could jeopardize the competitive position of EchoStar and SSL.
9. Finally, EchoStar notes that denying its request that this information be kept confidential would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future. The ability of a government agency to obtain confidential information was behind the legislative purpose in developing exemptions from the Freedom of

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<sup>9</sup> See *In re Application of Mobile Communications Holdings, Inc. for Authority to Construct the ELLIPSO Elliptical Orbit Mobile Satellite System*, 10 FCC Rcd. 1547, 1548 (Int'l Bur. 1994) ("buyers receive a clear competitive advantage if they know the prices that other buyers have been charged as a result of individual negotiations.").

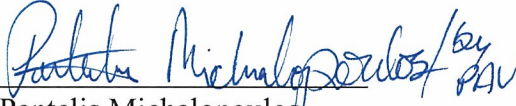
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Information Act.<sup>10</sup> The U.S. Court of Appeals for the D.C. Circuit has recognized a “private interest in preserving the confidentiality of information that is provided the Government on a voluntary basis.”<sup>11</sup> The Commission should extend a similar recognition to the enclosed materials.

EchoStar requests that, if its request for confidentiality is denied in whole or in part, the Commission return Attachment 2 to EchoStar.

Respectfully submitted,

Linda Kinney  
Vice President, Law and Regulation  
Brad Gillen  
Director and Senior Counsel  
**EchoStar Corporation**  
1233 20th Street, N.W., Suite 302  
Washington, DC 20036-2396  
(202) 293-0981

  
Pantelis Michalopoulos  
Petra Vorwig  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 429-3000  
*Counsel for EchoStar Corporation*

Enclosures

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<sup>10</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (“Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government’s] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.”).

<sup>11</sup> *Id.* at 879.

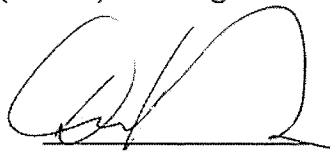
# **ATTACHMENT 1**

## **Certification of Critical Design Review Completion**

## CERTIFICATION

I, David Bair, certify under penalty of perjury that:

1. I am the Senior Vice President, Space Programs and Operations of EchoStar Corporation ("EchoStar").
2. To the best of my knowledge, information, and belief, EchoStar has completed critical design review of its proposed Direct Broadcast Satellite ("DBS") service geostationary orbit satellite to be located at the  $86.5^{\circ}$  W.L. orbital location.

A handwritten signature in black ink, appearing to read 'David Bair', written over a horizontal line.

David Bair

December 1, 2008