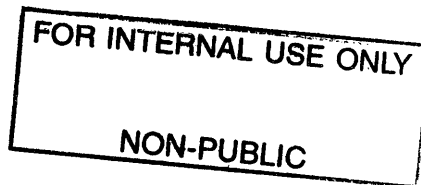


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October 9, 2007

FILED/ACCEPTED

OCT - 9 2007

Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals, Room TW-A325
445 12th Street, S.W.
Washington, D.C. 20554

REQUEST FOR CONFIDENTIAL TREATMENT

Re: EchoStar Satellite Operating Corporation, File No. SAT-LOA-20040803-00154, SAT-MOD-20051007-00198, SAT-AMD-20051118-00248, SAT-AMD-20060724-00081, SAT-MOD-20070323-00055; Call Sign S2636

Dear Ms Dortch:

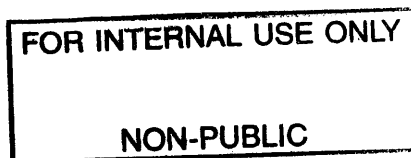
Pursuant to Sections 25.164(e) of the Commission's rules¹ and the Commission's *First Space Station Licensing Reform Order*,² EchoStar Satellite Operating Corporation ("EchoStar") hereby submits a certification that it has met the "commence physical construction" milestone set forth in its authorization to operate a Ka-band Fixed-Satellite Service ("FSS") satellite at 112.85° W.L.³ See Attachment 1. EchoStar also is providing a statement from Space

¹ 47 C.F.R. § 25.164(e).

² *Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, 18 FCC Rcd 10760, at ¶ 192 (2003) (requiring that a licensee submit evidence that it has met the physical construction milestone) ("*First Space Station Licensing Reform Order*").

³ See Stamp Grant, File No. SAT-LOA-20040803-00154 (rel. Oct. 8, 2004) at condition 2.c, modified by Stamp Grant, File Nos. SAT-MOD-20051007-00198, SAT-AMD-20051118-

(Continued...)



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Systems/Loral (“SSL”), the company responsible for manufacturing the satellite (Attachment 2). This information is being provided as further demonstration that EchoStar has met the physical construction milestone for this license.

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 commercial, financial, and technical information that “would customarily be guarded from competitors” regardless of whether or not such materials are protected from disclosure by a privilege. *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.”). 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 0.459.⁴ A 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 physical construction milestone.

More specifically, 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 physical construction milestone and includes specific information regarding the detailed construction status and technical capabilities of the satellite under construction. 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. §25.164(d), to demonstrate compliance with the physical construction

00248, SAT-AMD-20060724-00081 (rel. Oct. 19, 2006); Stamp Grant, File No. SAT-MOD-20070323-00055 (rel. Jun. 21, 2007).

⁴ 47 C.F.R. §§ 0.457, 0.459.

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milestone contained in EchoStar's Ka-band license for the 112.85° W.L. orbital location.⁵

3. As mentioned, this information contains extremely sensitive commercial, financial, and technical information that would customarily be kept from competitors. Specifically, the information consists of the construction status of EchoStar's proposed Ka-band satellite, as certified by SSL. EchoStar would be severely prejudiced in its ability to compete if such information were released to competitors. Moreover, SSL could be prejudiced in future negotiations regarding construction of satellites if information about its arrangements with EchoStar regarding construction timing and the satellite's technical characteristics were made available to other satellite construction companies or to prospective purchasers of satellites.
4. The information for which non-disclosure is sought pertains to the Fixed-Satellite Service, for which numerous competitors have received licenses. Other providers of such services (as well as the competitors of SSL) stand to benefit competitively from any knowledge of the construction status 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 competitors, the satellite construction industry and the public, the design and construction status of EchoStar's proposed satellite system, as certified by SSL. Such information could be used by the competitors of EchoStar to develop competing service offerings. *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). 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, technical criteria and characteristics of its satellite construction projects are not disclosed to the public, including confidentiality clauses in such contracts.

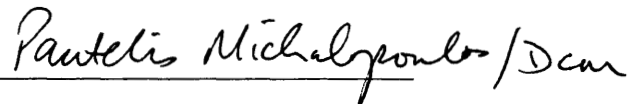
⁵ See Stamp Grant, File No. SAT-LOA-20040803-00154, at condition 2.c. (rel. Oct. 8, 2004). See also *First Space Station Licensing Reform Order* at ¶ 192.

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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 continually obtain confidential information was behind the legislative purpose in developing exemptions from the Freedom of Information Act. *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878-79 (D.C. Cir. 1992). The Commission should extend a similar recognition to the enclosed materials.

EchoStar requests that the Commission not release the information contained in Attachment 2 and return it to EchoStar if its request for confidentiality is denied in whole or in part.

Respectfully submitted,

 Pantelis Michalopoulos /DCM

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Enclosures