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NON-PUBLIC

July 28, 2010

FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

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

CONFIDENTIAL -- NOT FOR PUBLIC INSPECTION

Re: EchoStar Corporation
File Nos. SAT-LOA-20020328-00050, SAT-AMD-20051118-00245, SAT-AMD-
20080114-00020, SAT-AMD-20080213-00043, Call Sign S2442

Dear Ms. Dortch:

Pursuant to Section 25.164(b) of the Commission's rules, 47 C.F.R. §25.164(b) EchoStar Corporation ("EchoStar") hereby submits a copy of the satellite construction contract that has been executed with Space Systems/Loral ("SSL")¹ to demonstrate compliance with the contract execution milestone set forth in Section 25.164(a) of the Commission's rules and its authorization to construct a satellite in the 17/24 GHz Broadcasting-Satellite Service ("BSS") service to be located at the 107° W.L. orbital location.² See Attachment 1. The effective date of the contract is July 27, 2010, and the scheduled delivery date of the satellite is April 27, 2014.

¹ The contract with SSL has been entered into by EchoStar Orbital L.L.C. for the benefit of its parent, EchoStar.

² See *Stamp Grant*, File Nos. SAT-LOA-20020328-00050, SAT-AMD-20051118-00245, SAT-AMD-20080114-00020, SAT-AMD-20080213-00043, Condition 6.a. (granted July 28, 2009). See also 47 C.F.R. §25.164(b).

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Pursuant to Sections 0.457 and 0.459 of the Commission Rules governing the submission of confidential materials, 47 C.F.R. §§ 0.457, 0.459, EchoStar respectfully requests that certain portions of the contract in Attachment 1 be afforded confidential treatment and not be placed in the Commission's public files. In a separate submission, EchoStar is providing the Commission with a public, redacted version of this contract and the related materials for the satellite.³

Specifically, the redacted portions of the contract should be withheld from disclosure because EchoStar faces substantial competition in the satellite services markets, from such entities as SES World Skies, Intelsat and others. SS/L similarly faces substantial competition in the satellite manufacturing market from such entities as Lockheed Martin. If the information redacted from the contract is released to competitors, both entities would face substantial competitive harm.⁴ This information consists of the price terms and commercially sensitive non-price terms agreed upon with SS/L for the construction of a 17/24 GHz BSS satellite for EchoStar. EchoStar would be severely prejudiced in its ability to compete if specific information regarding SS/L's price and critical non-price terms were released to competitors because such competitors could use it to develop competing services.⁵ EchoStar also would be prejudiced in any future negotiations regarding construction of satellites if pricing information were available to satellite construction companies. For its part, SS/L would be prejudiced in any future negotiations regarding construction of satellites if its pricing, technical and insurance-related information were available to other satellite construction companies or to prospective purchasers of satellites.

The redacted portions of the contract also qualify as "commercial or financial information" that "would customarily be guarded from competitors" regardless of whether or not such materials are protected from disclosure by a privilege.⁶ EchoStar takes significant measures

³ See Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC (July 28, 2010).

⁴ *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

⁵ 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").

⁶ 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

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to ensure that this information is not disclosed to the public, and the attached material for which non-disclosure is sought is not available to the public.

Finally, denying EchoStar's 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.⁷ 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."⁸ The Commission should extend a similar recognition to the enclosed materials.

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 SS/L. EchoStar further requests that the Commission not release these redacted materials if its request for confidentiality is denied in whole or in part without first consulting with EchoStar.

kind that would customarily not be released to the public by the person from whom it was obtained.").

⁷ See *Critical Mass Energy Project*, 975 F.2d at 878 ("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.").

⁸ *Id.* at 879.

