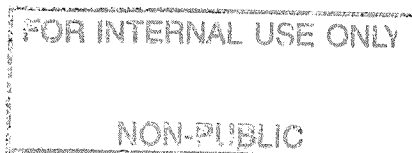


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FILED/ACCEPTED

August 22, 2011

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

AUG 22 2011

Federal Communications Commission  
Office of the Secretary

## REQUEST FOR CONFIDENTIAL TREATMENT

**Re: EchoStar Satellite Operating Corporation;**  
**File Nos. SAT-LOA-20020328-00050 (Call Sign S2440);**  
**SAT-LOA-20020328-00051 (Call Sign S2441);**  
**SAT-LOA-20020328-00052 (Call Sign S2442);**  
**SAT-LOA-20070105-00001 (Call Sign S2723); and**  
**SAT-LOA-20070105-00003 (Call Sign S2725).**

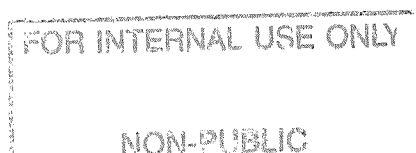
Dear Ms. Dortch:

In the attached filing, EchoStar Satellite Operating Corporation ("ESOC") submits documentation in order to:

- 1) provide background on and summarize ESOC's prior submissions to show its compliance with the milestone conditions for its five 17/24 GHz Broadcast-Satellite Service ("BSS") space station authorizations (Call Signs S2440, S2441, S2442, S2723, and S2725); and
- 2) respond to the Commission's request, dated July 21, 2011 ("July 21<sup>st</sup> Letter"), for additional information and materials regarding ESOC's compliance with such milestones.<sup>1</sup> This

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<sup>1</sup> Letter from Robert G. Nelson, Chief, Satellite Division, FCC, to Pantelis Michalopoulos, Counsel for EchoStar Satellite Operating Corporation, File Nos. SAT-LOA-20020328-00050; SAT-LOA-20020328-00051; SAT-LOA-20020328-00052; SAT-LOA-20070105-00001; SAT-LOA-20070105-00003 (July 21, 2011) ("July 21<sup>st</sup> Letter").



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information and materials further demonstrate that the critical design review (“CDR”) has been duly completed for three of these authorizations (Call Signs S2440, S2725, and S2723).

Pursuant to Sections 0.457 and 0.459 of the Commission rules governing the submission of confidential materials,<sup>2</sup> ESOC respectfully requests that the attached letter and associated materials be afforded confidential treatment in their entirety and not be placed in the Commission’s public files. A public version is being submitted for the public file.

The supplemental documentation demonstrating milestone compliance for the satellites in the enclosed letter should be withheld from disclosure because 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 of ESOC’s proposed 17/24 GHz BSS satellites, as agreed upon with Space Systems/Loral (“SS/L”), including analyses of the satellite’s dynamics and control, mass properties, electrical power subsystems, thermals, and structure. ESOC 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 in Attachments 1, 2, and 3 is released to competitors, both entities would face substantial competitive harm.<sup>3</sup>

ESOC would be severely prejudiced in its ability to compete if specific information regarding the specific design and operations of its satellites, as well as price and critical non-price terms were released to competitors because such competitors could use it to develop competing services.<sup>4</sup> ESOC 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 and technical information were available to other satellite construction companies or to prospective purchasers of satellites.

The documentation provided also qualifies as “commercial or financial information” that “would customarily be guarded from competitors” regardless of whether or not such materials

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<sup>2</sup> 47 C.F.R. §§ 0.457, 0.459.

<sup>3</sup> *National Parks & Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

<sup>4</sup> See Application of Mobile Communications Holdings, Inc. for Authority to Construct the ELLIPSO Elliptical Orbit Mobile Satellite System, *Order on Reconsideration*, 10 FCC Rcd. 1547, 1548 (1994) (“[B]uyers 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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are protected from disclosure by a privilege.<sup>5</sup> ESOC and SS/L take significant measures 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 ESOC'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.<sup>6</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>7</sup> The Commission should extend a similar recognition to the enclosed materials.

ESOC 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 ESOC and SS/L. ESOC 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 ESOC. ESOC requests that if its request for confidentiality is denied in whole or in part, the Commission returns Attachments 1, 2 and 3 to ESOC.

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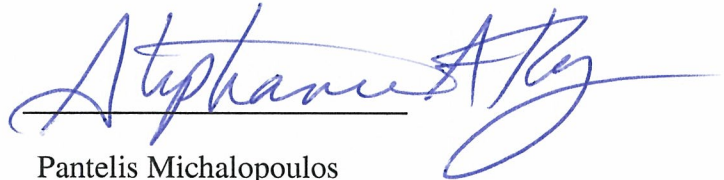
<sup>5</sup> See 47 C.F.R. § 0.457(d); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("[W]e conclude that financial or commercial information provided to the Government on a voluntary basis is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.").

<sup>6</sup> 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.").

<sup>7</sup> *Id.* at 879.

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Respectfully submitted,



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Stephen Duall – International Bureau  
Chip Fleming – International Bureau