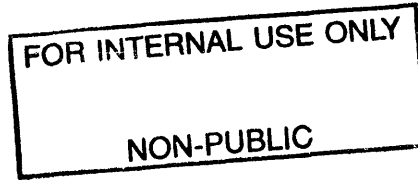


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November 29, 2007

FILED/ACCEPTED

NOV 29 2007

Federal Communications Commission
Office of the Secretary

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

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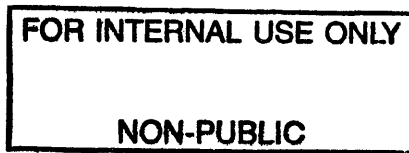
**Re: EchoStar Satellite Operating Corporation
File No. SAT-LOA-20030609-00113, Call Sign S2454**

Dear Ms Dortch:

Pursuant to Section 25.148(b) of the Commission's rules,¹ EchoStar Satellite Operating Corporation ("EchoStar") hereby submits a copy of the satellite construction contract that has been executed with Space Systems/Loral ("SSL")² to demonstrate compliance with the

¹ 47 C.F.R. §25.148(b).

² The contract with SSL has been entered into by EchoStar Orbital Corporation II ("EOC II") for the benefit of EchoStar. EOC II is an affiliate of EchoStar that is wholly owned by EchoStar's ultimate parent, EchoStar Communications Corporation. As the Commission is aware, EchoStar has recently filed applications for the *pro forma* assignment and transfer of control of its DBS license at the 86.5° W.L. orbital location to EchoStar Holding Corporation as part of a planned corporate restructuring and spin-off. These applications were recently granted, but have not yet been consummated. See File No. SAT-ASG-20071108-00154; Public Notice, *Policy Branch Information – Actions Taken*, DA 07-4655 (rel. Nov. 16, 2007). Upon consummation, the benefit of this satellite construction contract between SSL will be assigned to EchoStar Holding Corporation.



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contract execution milestone set forth in 47 C.F.R. §25.148(b) and its authorization to construct a satellite in the Direct Broadcast Satellite ("DBS") service to be located at the 86.5° W.L. orbital location.³ See Attachment 1.

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 1⁴ be afforded confidential treatment and not be placed in the Commission's public files.

Please note that the effective date of the contract is November 29, 2007, and that the scheduled delivery date of the satellite is November 29, 2010, consistent with the construction completion milestone. Accordingly, this documentation establishes that EchoStar has entered into a binding contract for the construction of a DBS satellite that is scheduled to be delivered in time to meet the remaining milestones set forth in EchoStar's space station authorization.⁵

In a separate submission, EchoStar is providing the Commission with a public, redacted version of this contract and the related materials for the satellite, and this request for confidential treatment relates only to the portions of these materials redacted from the public version.⁶

³ See *In the Matter of 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, DA 06-2440 (rel. Nov. 29, 2006), at ¶30 (establishing a contract execution milestone of one year from Commission grant). See also 47 C.F.R. §25.148(b).

⁴ To the extent the contract and specifications reflect enhanced or different capabilities than has been authorized, EchoStar will seek to modify its authorization prior to launch and is proceeding with construction of the satellite at its own risk. See 47 C.F.R. § 25.113(f).

⁵ See *In the Matter of 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, DA 06-2440 (rel. Nov. 29, 2006), at ¶30 (establishing a contract execution milestone at one year, a critical design review milestone at two years, a construction completion milestone at four years, and a system operation milestone at six years from Commission grant).

⁶ See Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC, dated November 29, 2007.

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The redacted portions of the contract contain information that qualifies 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. *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 redacted portions of the contract contain sensitive information that if disclosed could place EchoStar and SSL at a competitive disadvantage, including specific information regarding price terms, interest terms, insurance terms and obligations, allocation of liability, and termination provisions, and therefore warrant protection under 47 C.F.R. § 0.459. Both EchoStar and SSL would be placed at a significant disadvantage if these detailed terms of their contract were revealed to competing service providers, who stand to benefit competitively from any knowledge of the redacted commercial terms included in these materials.

In support of this request 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 contract execution milestone and includes specific information regarding the price and other critical non-price terms agreed upon with SSL, a satellite contractor. As noted above, EchoStar is filing a redacted version of this contract and related materials, and this request for confidential treatment pertains only to provisions of the contract that are 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 contract execution milestone contained in EchoStar’s DBS license for the 86.5° W.L. orbital location.⁷

⁷ *See In the Matter of 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, DA 06-2440 (rel. Nov. 29, 2006), at ¶30 (establishing a contract execution milestone of one year from Commission grant).

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3. This information contains extremely sensitive commercial and financial information that would customarily be kept from competitors. Specifically, the information consists of the price terms and commercially sensitive non-price terms agreed upon with SSL for the construction of a DBS satellite for EchoStar. EchoStar would be severely prejudiced in its ability to compete if specific information regarding SSL's price and critical non-price terms were released to competitors. Moreover, SSL 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 -- as a result, SSL has requested that EchoStar redact this information.
4. The information for which non-disclosure is sought pertains to DBS satellite services, for which competitors have received licenses. EchoStar's competitors (as well as the competitors of SSL) for DBS and direct-to-home television services stand to benefit competitively from any knowledge of the price and critical non-price terms contained in the contract between EchoStar and SSL.
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 EchoStar's agreed-upon price terms and critical non-price terms for its satellite system. Such information could be used by the competitors of EchoStar to develop competing service offerings.⁸ Moreover, EchoStar would be prejudiced in any future negotiations regarding construction of satellites if pricing information were available to satellite construction companies.
6. EchoStar takes significant measures to ensure that this information is not disclosed to the public.
7. The attached material for which non-disclosure is sought is not available to the public.

⁸ 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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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.⁹ 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."¹⁰ The Commission should extend a similar recognition to the enclosed materials.

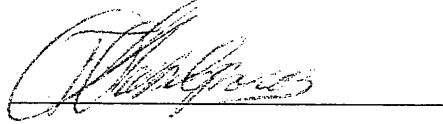
EchoStar requests that the Commission not release these redacted materials if its request for confidentiality is denied in whole or in part without first consulting with EchoStar.

⁹ 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.").

¹⁰ *Id.* at 879.

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Respectfully submitted,



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cc: Andrea Kelly – International Bureau

Enclosures