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Federal Communications Commission
Office of Secretary

Received

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Policy Branch
International Bureau

February 10, 2006

Via HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Re: **EchoStar Satellite Operating Corporation, Reply to Comments Filed by DIRECTV Enterprises, LLC - File No. SAT-LOA-20051221-00267 (formerly SAT-MOD-20051221-00267)**

Dear Ms. Dortch:

EchoStar files this letter to:

- apprise the Commission of the status of its discussions with DIRECTV Enterprises, LLC ("DIRECTV"); and
- request permit-but-disclose treatment of this proceeding in light of the broad and significant policy issues presented.

I. Status of Discussions with DIRECTV

While EchoStar remains fully willing to devote as much time and effort to negotiate with DIRECTV as is necessary to reach agreement on reasonable cross-polar C/I levels for DIRECTV 5, it must report that negotiations between the two companies are currently stalled. In particular, DIRECTV has presented no proposal to EchoStar that differs from the position it has expressed to the FCC. DIRECTV expects the EchoStar 10 satellite at 110° W.L. to ensure the same cross-polar C/I levels for the collocated DIRECTV 5 satellite as would result from satellite operations nine degrees away or from a collocated CONUS satellite -- an expectation that would mean that no spot beam operations could ever

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be conducted on the three frequencies in question. EchoStar will shortly file a further technical analysis to respond directly to the substance of DIRECTV's submissions of February 3, 2006.¹

II. "Permit-But-Disclose"

More is at issue in this proceeding than cross-polarization power levels. In addition to the technical issues, this proceeding is undergirded by another reality -- the fact that DIRECTV and EchoStar compete with one another. Resolution of this technical dispute may tip the scales of this competition. While a satellite application is a "restricted" proceeding by default under the *ex parte* rules,² the Commission and its staff may change the applicable rules "where the public interest so requires . . .,"³ and this is precisely the type of proceeding where such a change is appropriate. This proceeding raises substantial questions of public import, such as the provision of local-into-local service and compliance with the same-dish requirement in the Satellite Home Viewer Extension and Reauthorization Act ("SHVERA").⁴ Accordingly, re-designating this proceeding as "permit-but-disclose" would serve the public interest by facilitating communications by EchoStar and DIRECTV on the unique technical issues arising in this proceeding and their repercussions.

Please contact the undersigned if you have any questions regarding this filing.

Respectfully yours,



Pantelis Michalopoulos
Counsel for EchoStar Satellite Operating
Corporation

¹ See Response of DIRECTV Enterprises, LLC, filed in SAT-MOD-20051221-00267 (filed Feb. 3, 2006) ("DIRECTV Response"); Letter from William M. Wiltshire and Michael D. Nilsson, Counsel for DIRECTV Enterprises, LLC, to Marlene H. Dortch, Secretary, FCC, filed in SAT-LOA-20051221-00267 (formerly SAT-MOD-20051221-00267) (filed Feb. 3, 2006) ("DIRECTV Letter").

² 47 C.F.R. § 1.1208.

³ 47 C.F.R. §§ 1.1200(a), 1.1208.

⁴ See 47 U.S.C. § 338(g) (inserted by SHVERA § 203).

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cc:

Andrea Kelly, International Bureau

Robert Nelson, International Bureau

Chip Fleming, International Bureau

William M. Wiltshire, *Counsel for DIRECTV Enterprises, LLC*