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Federal Communications Commission  
Office of Secretary

**BY HAND DELIVERY**

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

**Re: SAT-LOA-20051221-00267 (formerly SAT-MOD-20051221-00267)**

Dear Ms. Dortch:

DIRECTV Enterprises, LLC ("DIRECTV") hereby responds briefly to the letter filed on February 10, 2006 by EchoStar Satellite Operating Company ("EchoStar").<sup>1</sup> Echostar states in that letter that negotiations to resolve DIRECTV's concerns over the serious interference issues surrounding the operation of EchoStar 10 have stalled. However, it is hard to fathom EchoStar's assertion that "DIRECTV has presented no proposal to EchoStar that differs from the position it has expressed to the FCC."<sup>2</sup> DIRECTV has provided a technical analysis that lays out the interference scenario in detail, and has expressed the levels of protection it deems necessary for operation of the DIRECTV 5 satellite at 110° W.L. Unlike EchoStar, which ignored the problem during satellite development and then failed to recognize the cross-polar interference potential of the satellite in its license application, DIRECTV immediately raised its concerns to Echostar with a desire to find a solution. More fundamentally, it is EchoStar – as the party that proposes to cause greatly increased interference – that should be presenting proposals for protecting DIRECTV 5. However, DIRECTV has received no proposal from EchoStar other than the parameters provided in a February 3 *ex parte*.<sup>3</sup> If EchoStar has no further proposals to make that would alleviate DIRECTV's concerns, then DIRECTV would agree that negotiations have stalled.

<sup>1</sup> See Letter from Pantelis Michalopoulos to Marlene H. Dortch (dated Feb. 10, 2006) ("Feb. 10 Letter").

<sup>2</sup> *Id.* at 1.

<sup>3</sup> See Letter from Pantelis Michalopoulos to Marlene H. Dortch (dated Feb. 3, 2006).

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EchoStar also complains that DIRECTV's protection criteria would effectively preclude spot beam operations on the three DBS channels licensed to EchoStar that are interleaved with channels licensed to DIRECTV.<sup>4</sup> That is simply untrue. All DIRECTV asks is that EchoStar decrease the power of its spot beams using those channels so that they operate at levels more comparable to DIRECTV 5. Of course, even though EchoStar is licensed to operate on 29 of the 32 DBS channels at the 110° W.L. orbital location, EchoStar chose to operate on only 10 of those channels, including three that overlap with the co-located, cross-polarized DIRECTV 5. EchoStar could have avoided this entire issue had it chosen to use channels other than those three. For whatever reason, EchoStar failed to make this simple and obvious engineering choice, and now it seeks to have DIRECTV accept unnecessarily high interference levels that could easily have been avoided.

DIRECTV also opposes EchoStar's request to designate this proceeding as "permit but disclose" for purposes of the Commission's *ex parte* rules. EchoStar notes that the Commission has the discretion under Section 1.1208 of its Rules to change the designation of a proceeding "where the public interest so requires."<sup>5</sup> However, EchoStar conveniently omits the note to that rule that explains when such discretion should be exercised. Specifically, that note requires a determination that an otherwise restricted proceeding "involves primarily issues of broadly applicable policy rather than the rights and responsibilities of specific parties" in order to justify a change in *ex parte* status.<sup>6</sup> In this application proceeding, there is no such issue. In fact, EchoStar itself has described the interference issues in this case as arising from "the unique circumstance surrounding DIRECTV's three licensed channels that are 'interleaved' with three of EchoStar's 29 frequencies at 110° W.L."<sup>7</sup> Later in that same pleading, EchoStar repeated that assertion, and concluded: "***There is no similar DBS sharing situation.***"<sup>8</sup>

Needless to say, it is not possible to square EchoStar's original assertion as to the "unique" circumstances of this case with its current request for a change in *ex parte* status that must rely upon a finding that this proceeding "involves primarily issues of broadly applicable policy." At its heart, this is a matter of bilateral coordination between the only two DBS operators licensed by the Commission. DIRECTV submits that there is no

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<sup>4</sup> Feb. 10 Letter at 1.

<sup>5</sup> See *id.* at 2 (quoting 47 C.F.R. § 1.1200(a) and 1.1208).

<sup>6</sup> 47 C.F.R. § 1.1208, Note 2.

<sup>7</sup> Reply Comments of EchoStar Satellite Operating Company at 2 (filed Jan. 31, 2006).

<sup>8</sup> *Id.* at 5 (emphasis added).

**HARRIS, WILTSHIRE & GRANNIS LLP**

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basis for granting EchoStar's request and that the public interest would be better served by continuing to observe the rules presumptively applicable to this proceeding.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William M. Wiltshire".

William M. Wiltshire  
Michael D. Nilsson  
*Counsel for DIRECTV Enterprises, LLC*

cc: Robert Nelson  
Andrea Kelly  
Chip Fleming  
Rockie Patterson  
Pantelis Michalopoulos