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Federal Communications Commission
Office of the Secretary

December 21, 2007

BY HAND DELIVERY

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

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**Re: EchoStar Satellite Operating Corporation - Application for Authority to Launch the AMC-14 Satellite and Operate that Satellite at 61.5°
File No. SAT-LOA-20071221-00183**

REQUEST FOR CONFIDENTIAL TREATMENT

Dear Ms. Dortch:

EchoStar Satellite Operating Corporation (“EchoStar”), pursuant to the provisions of Sections 0.457 and 0.459 of the Commission’s Rules governing submission of confidential materials, 47 C.F.R. §§ 0.457, 0.459, respectfully requests that the unredacted copy of the Satellite Services Agreement for AMC-14 (dated August 13, 2003), and a Letter Amendment (dated July 31, 2006), between SES Americom, Inc. (“SES”) and EchoStar’s affiliate, EchoStar Satellite L.L.C., (collectively, the “Agreement”) be afforded confidential treatment and not be placed in the Commission’s public files of the above-referenced application. EchoStar is also supplying the Commission with a public, redacted version of the Agreement, and this request for confidential treatment relates only to the portion of the Agreement that was redacted from the public version.¹

The redacted portions of the Agreement address commercial arrangements that have not yet been completed and future obligations of the parties related to the launch and

¹ Both the public, redacted version, and the confidential unredacted version of the Agreement are included with this request for confidential treatment.

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operation of the AMC-14 satellite. That material 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); *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.”); *see also* *DIRECTV, Inc.; Request for Special Temporary Authority to Relocate DIRECTV 3 to 82° W.L. and to Conduct Telemetry, Tracking and Command (“TT&C”) Operations for an Interim Period*, File No. SAT-STA-20030903-00300 (application in which the FCC accepted redacted contract as part of record).

As an initial matter, most businesses do not publicly reveal supply contracts that enable them to provide their end product in the market. Thus, almost all of the specific terms in such an agreement would be the type of commercial information that “would not customarily be released to the public” and should be treated as confidential. Companies routinely guard information about their future plans or operations from their competitors. Finally the fact that the redacted information in the Agreement is the type of information that “would customarily be guarded from competitors” is demonstrated by the Confidentiality and Nondisclosure provisions of the Agreement (Article 8). Thus, the Commission should treat the redacted information as confidential under Section 0.457(d).

In addition, the redacted portions of the Agreement also contain highly sensitive information that if disclosed could place both EchoStar and SES at a competitive disadvantage, including specific information regarding future actions and obligations. There are a number of entities who would stand to benefit competitively from any knowledge of the redacted commercial terms included in the Agreement.

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 requested includes information on commercial arrangements that have not yet been completed and future obligations of the parties related to the use of the launch and operation of the AMC-14 satellite. As noted above, EchoStar is filing a redacted version of the Agreement with this submission, and this request for confidential treatment pertains only to those provisions of the Agreement that are redacted from the public version.
2. The redacted information is being submitted as part of EchoStar’s application for authority to launch and operate the AMC-14 satellite from the 61.5° W.L. orbital location.
3. The redacted portions of the Agreement contain sensitive commercial information. Specifically, the redacted information addresses further commercial arrangements that have not yet been completed and future obligations regarding the operation of the AMC-14 satellite. This

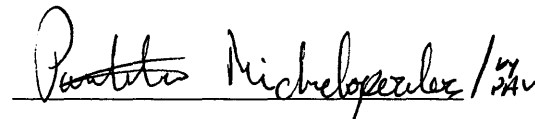
information is commercial information that has not been made public and is not available to EchoStar's and SES's competitors.

4. The redacted information pertains to the provision of multichannel video programming. The multichannel video programming distribution ("MVPD") market is a competitive market. *See, e.g., In the Matter of Annual Assessment in the Market of the Delivery of Video Programming*, Eleventh Annual Report, 20 FCC Rcd 2755 (2005). EchoStar faces competition from, among others, cable television providers and DirecTV, a larger digital broadcast satellite provider. These competitors could potentially use the redacted information to gain an advantage in the MVPD market.
5. Disclosure of the redacted information could result in substantial competitive harm to EchoStar and SES. The redacted information regarding future operations of the AMC-14 satellite would give EchoStar's and SES's competitors advanced notice of future plans that have not previously been made public. This would allow these competitors to take steps to counter whatever advantage EchoStar and SES may gain in the market based on the future operations of the AMC-14 satellite. In addition, the redacted information regarding further commercial arrangements that have not yet been completed could provide EchoStar's and SES's competitors with the ability to negatively impact these further commercial arrangements.
6. EchoStar takes significant measures to ensure that this confidential information is not disclosed to the public.
7. The redacted material for which non-disclosure is sought is not available to the public.
8. EchoStar requests that the redacted materials be withheld from disclosure for an indefinite period. Disclosure of this information at any time could jeopardize the competitive positions of EchoStar and SES.
9. Finally, EchoStar notes that a denial of 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. *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."). 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.” *Id.* at 879. The Commission should extend a similar recognition to the redacted materials.

EchoStar requests that the Commission return the Agreement if its request for confidentiality is denied. *See* 47 C.F.R. § 0.459(e). To the extent that the Commission concludes that the disclosure of some or all of the redacted terms should be made available to any parties to this proceeding, EchoStar would be willing to discuss the terms of a Protective Order and provide a somewhat less redacted version of the Agreement for review by outside counsel for those parties.

Respectfully submitted,

A handwritten signature in black ink that reads "Pantelis Michalopoulos" with a horizontal line underneath. To the right of the signature, there are initials "LW" and "JAV" written vertically.

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Enclosures

cc: Andrea Kelly – International Bureau