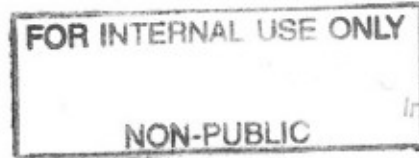


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Federal Communications Commission  
Office of Secretary

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

**REQUEST FOR CONFIDENTIAL TREATMENT**

**Re: EchoStar Satellite Operating Corporation, File No. SAT-MOD-20050308-00059,  
Call Sign S2499**

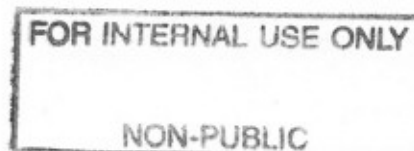
Dear Ms Dortch:

Pursuant to Sections 25.164(d) of the Commission's rules<sup>1</sup> and the Commission's *First Space Station Licensing Reform Order*,<sup>2</sup> EchoStar Satellite Operating Corporation ("EchoStar") hereby submits a certification of completion of the critical design review ("CDR") milestone set forth in its authorization to operate a Ka-band fixed-satellite service ("FSS") satellite at 97° W.L.<sup>3</sup> See Attachment 1. EchoStar also is providing documentation demonstrating completion of its CDR, including the CDR report produced pursuant to

<sup>1</sup> 47 C.F.R. §25.164(d).

<sup>2</sup> *In the Matter of Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris*, FCC 03-102, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, 18 FCC Rcd 10760, at ¶ 191 (2003) (requiring that a licensee submit evidence that it has met the critical design review milestone.) ("*First Space Station Licensing Reform Order*").

<sup>3</sup> See Stamp Grant, File No. SAT-MOD-20050308-00059 (granted April 20, 2005).



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EchoStar's contract with Space Systems/Loral ("SSL") (Attachment 2).<sup>4</sup> This information is being provided to demonstrate that EchoStar has met the CDR milestone contained in its Ka-band authorization for the 97° W.L. orbital location.<sup>5</sup>

EchoStar hereby requests that Attachment 2 be treated as confidential and not routinely available for public inspection pursuant to 47 C.F.R. §§ 0.457 and 0.459. Attachment 2 contains highly sensitive information that qualifies as commercial, financial, or technical 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 information contained in Attachment 2 includes sensitive information regarding the design and construction status of the proposed satellite that if disclosed could place EchoStar and SSL at a competitive disadvantage. Such information warrants protection under 47 C.F.R. §§ 0.457 and 0.459.<sup>6</sup> A cover sheet representing the redacted version of the attachment is being submitted separately for the public file, together with EchoStar's certification of compliance with the CDR milestone.

In support of this request for confidential treatment, 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 CDR milestone and includes specific information regarding the timing, payment schedules and technical criteria agreed upon with SSL with regard to the proposed satellite. As noted above, EchoStar is filing a public version of the attached materials, and this request for confidential treatment pertains only to Attachment 2 that is redacted from the public version.

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<sup>4</sup> EchoStar recently submitted a replacement contract for the construction of the EchoStar-97W satellite. *See* Letter from Pantelis Michalopoulos, Counsel for EchoStar, to Marlene H. Dortch, dated November 17, 2005.

<sup>5</sup> *See* Stamp Grant, File No. SAT-LOA-20030827-00186, at Condition 2(b).

<sup>6</sup> 47 C.F.R. §§0.457, 0.459.

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2. The information is being submitted, as required under 47 C.F.R. §25.164(d), to demonstrate compliance with the CDR milestone contained in EchoStar's Ka-band license for the 97° W.L. orbital location.<sup>7</sup>
3. 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 and construction status of EchoStar's proposed Ka-band satellite, as agreed upon with SSL. EchoStar would be severely prejudiced in its ability to compete if such information were released to competitors. Moreover, SSL could be prejudiced in future negotiations regarding construction of satellites if information about its arrangements with EchoStar were to be available to other satellite construction companies or to prospective purchasers of satellites.
4. The information for which non-disclosure is sought pertains to Ka-band satellite services, for which numerous competitors have received licenses. EchoStar's competitors (as well as the competitors of SSL) for Ka-band services stand to benefit competitively from any knowledge of the construction status and progress of EchoStar's proposed satellite contained in Attachment 2.
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, the design and construction status of EchoStar's proposed satellite system, as agreed-upon with SSL. Such information could be used by the competitors of EchoStar to develop competing service offerings. *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."). Moreover, EchoStar would be prejudiced in any future negotiations regarding construction of satellites if such information were available to other satellite manufacturers.

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<sup>7</sup> See Stamp Grant, File No. SAT-LOA-20030827-00186, at Condition 2(b) (establishing a CDR milestone of March 8, 2006). See also *First Space Station Licensing Reform Order* at ¶ 191.

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6. EchoStar takes significant measures to ensure that the timing, payment terms and technical criteria contained in its satellite manufacturing contracts are not disclosed to the public, including confidentiality clauses in such contracts.
7. The attached material for which non-disclosure is sought is not available to the public.
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. 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 enclosed materials.

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EchoStar requests that the Commission not release the information contained in Attachment 2 if its request for confidentiality is denied in whole or in part without first consulting with EchoStar.

Respectfully submitted,

David K. Moskowitz  
Senior Vice President and General Counsel  
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*Counsel for EchoStar Communications  
Corp. and EchoStar Satellite Operating  
Corporation*

Enclosures

**Attachment 1**  
**Certification of David Bair**

## CERTIFICATION

I, David Bair, certify under penalty of perjury that:

1. I am the Senior Vice President, Space Programs and Operations of EchoStar Communications Corporation ("EchoStar"), the ultimate parent of EchoStar Satellite Operating Corporation.
2. To the best of my knowledge, information, and belief, EchoStar has completed critical design review of its proposed Ka-band geostationary orbit fixed-satellite service ("FSS") satellite to be located at the 97° W.L. orbital location.
3. To the best of my knowledge, information, and belief, EchoStar has met every milestone and fulfilled all of its obligations under its manufacturing contract with Space Systems/Loral, as of the date hereof.



David Bair

March 8, 2006

## **Attachment 2**

### **CD of CDR Report**

***Contents of CD Are Confidential and  
Proprietary - Not for Public Disclosure***