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File Number: SAT-STA-20050203-00018
Callsign:

FEDERAL COMMUNICATIONS COMMISSION
APPLICATION FOR SPACE STATION SPECIAL TEMPORARY AUTHORITY
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APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:
STA Request for EchoStar 5 -- 129 W.L.

1. Applicant

Name:	EchoStar Satellite L.L.C.	Phone Number:	303-723-1000
DBA Name:		Fax Number:	303-723-1699
Street:	9601 South Meridian Blvd.	E-Mail:	
City:	Englewood	State:	CO
Country:	USA	Zipcode:	80112 -
Attention:	David K Moskowitz		

2. Contact

Name:	Pantelis Michalopoulos	Phone Number:	202-429-6494
Company:	Step toe & Johnson LLP	Fax Number:	202-429-3902
Street:	1330 Connecticut Ave., N.W.	E-Mail:	pmichalo@steptoe.com
City:	Washington	State:	DC
Country:	USA	Zipcode:	20036 -1795
Contact Title:		Relationship:	Legal Counsel

(If your application is related to an application filed with the Commission, enter the file number below.)

3. Reference File Number

4a. Is a fee submitted with this application?

- If Yes, complete and attach FCC Form 159. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).
- Governmental Entity Noncommercial educational licensee
- Other (please explain):

4b. Fee Classification CRY -- Space Station (Geostationary)

5. Type Request

- Change Station Location Extend Expiration Date Other

6. Temporary Orbit Location
129 W.L.

7. Requested Extended Expiration Date

8. Description (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

See attached application for special temporary authority.

9. By checking Yes, the undersigned certifies that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti-Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes. Yes No

10. Name of Person Signing
David K. Moskowitz

11. Title of Person Signing
Executive Vice President and General Counsel

12. Please supply any need attachments.

Attachment 1: Narrative

Attachment 2: Exhibit 1

Attachment 3: Exhibit 2

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(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).**

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)

ECHOSTAR SATELLITE L.L.C.)

File No. SAT-STA-2005_____

)
Application for Special Temporary Authority)
To Move EchoStar 5 to 129° W.L. and To)
Conduct Telemetry, Tracking and Command)
Operations During the Relocation to)
this Orbital Location.)
_____)

EXPEDITED CONSIDERATION REQUESTED

APPLICATION FOR SPECIAL TEMPORARY AUTHORITY

Pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309, and Part 25 of the Commission's Rules, 47 C.F.R. Part 25, EchoStar Satellite L.L.C. ("EchoStar") hereby files this application for special temporary authority ("STA") to (a) move the EchoStar 5 satellite from its current orbital position at 119° W.L. to 129° W.L.; and (b) perform telemetry, tracking and command ("TT&C") operations in order to relocate EchoStar 5 to this new orbital location where it will operate as a Canadian satellite licensed to Ciel Satellite Communications, Inc. ("Ciel").¹ EchoStar requests that this STA be granted expeditiously because under Ciel's license from Industry Canada, Ciel must complete placement of an interim

¹ See Letter from Jan Skora, Director General, Radiocommunications and Broadcasting Regulatory Branch, Industry Canada to Kevin B. Smyth, Chief Executive Officer, Ciel Satellite Communications, Inc., February 1, 2005 ("*Approval in Principle*"). A copy of this letter is attached as Exhibit 2. The approval in principle was granted to Ciel Satellite Limited Partnership. Ciel Satellite Communications, Inc. is the general partner in Ciel Satellite Limited Partnership.

satellite into the 129° W.L. orbital location by August 25, 2005.² In order to allow for sufficient time to drift and test the satellite at the 129° W.L. orbital location before operations are to begin at that location, the authority requested herein is needed no later than June 25, 2005. EchoStar requests temporary authority for a period of 60 days.

The grant of this application is in the public interest because it would provide EchoStar with access to additional spectrum resources to provide more local into local, high definition, and other programming to its subscribers and would allow EchoStar to begin to transition its local programming onto a single satellite dish as required by the recently enacted Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”).³ In addition, grant of this application would allow EchoStar to compete more effectively against established cable operators in the multichannel video programming distribution (“MVPD”) market and would enhance spectrum efficiency by bringing new Direct Broadcast Satellite (“DBS”) services from a Canadian orbital location previously unavailable to U.S. consumers. Finally these public interest benefits will be secured without any detriment to consumers since the 21 DBS channels at the 119° W.L. orbital location licensed to EchoStar will remain fully used by the EchoStar 7 satellite.⁴

² *See Approval in Principle.*

³ SHVERA requires that satellite carriers must provide all local stations in each market on a single satellite dish no later than 18 months after the effective date of the Act. *See* Section 203 of the Satellite Home View Extension and Reauthorization Act of 2004 (enacted December 8, 2004).

⁴ In addition, EchoStar is filing a blanket receive-only earth station application to receive DBS service from the EchoStar 5 (or a comparable satellite) operated from the Canadian orbital location at 129° W.L.

I. BACKGROUND AND INTRODUCTION

EchoStar is the holder of many DBS licenses, including one allowing EchoStar 5 to operate 21 DBS channels at 119° W.L.⁵ The EchoStar 7 satellite is also licensed to operate on these channels at the same orbital location. EchoStar has entered into a contractual arrangement with Ciel whereby EchoStar has agreed to operate up to 32 DBS channels on EchoStar 5 (or a comparable satellite) at the 129° W.L. for an interim period of time pending the launch of the Ciel-2 satellite to that location.⁶ Ciel has been authorized by Industry Canada to develop and operate a Broadcasting-Satellite Service (“BSS”) satellite at the 129° W.L. orbital location.⁷

Pursuant to EchoStar’s agreement with Ciel, EchoStar 5 will be redeployed to the 129° W.L. orbital location from which it will operate as a Canadian-licensed satellite. EchoStar and its affiliates will retain title to and ownership of EchoStar 5. To enable EchoStar 5 to serve the United States from that Canadian BSS position, EchoStar is filing an application for blanket authority for 1 million receive-only earth stations to communicate with EchoStar 5 at 129° W.L. In addition, EchoStar will also be filing related feeder link and TT&C earth station applications to support the provision of DBS services from EchoStar 5 at its new orbital location. For the reasons stated below, the grant of this application is in the public interest.

⁵ See *In the Matter of EchoStar Satellite Corporation Application for Minor Modification of Four DBS Space Station Authorizations*, Files Nos. SAT-MOD-20030303-00024, SAT-MOD-20030303-00025, SAT-MOD-20030303-00026, SAT-MOD-20030303-00027, SAT-STA-20030508-00092, DA 03-2379, Memorandum Opinion and Order (Released: July 22, 2003).

⁶ A redacted copy of the agreement between EchoStar and Ciel is attached with this filing as Exhibit 1. EchoStar is also submitting a hard copy of the unredacted agreement with a request for confidential treatment of the redacted materials.

⁷ See *Approval in Principle*.

II. GRANT OF THIS APPLICATION WILL NOT CAUSE HARMFUL INTERFERENCE TO OTHER OPERATING SATELLITES

The grant of this application for Special Temporary Authority will not present any significant risk of interference to other U.S. and non U.S. satellites. There are no currently operational BSS satellites using these frequencies within 9 degrees of the 129° W.L. location. The regular DBS transmissions for EchoStar 5 satellite will be turned off during the transition from 119° W.L. to 129° W.L., with only TT&C operations being performed in the DBS bands during this interim period. In accordance with industry practice, EchoStar will coordinate its TT&C operations with potentially affected satellite operators during the relocation of the satellite. Once the satellite reaches 129° W.L. and is ready for operations, both DBS and TT&C operations will be conducted at that location, subject to the approval of EchoStar's blanket license application.

III. GRANT OF THIS APPLICATION IS IN THE PUBLIC INTEREST

The grant of this application is in the public interest because it would provide EchoStar with much needed spectrum to offer more local into local, high definition, and other programming. In addition, the provision of service from the 129° W.L. orbital location will be a significant part of EchoStar's plan to provide its local programming in each market on a single satellite dish as required under SHVERA. The grant of this application would also be consistent with the Commission's recent grant of an STA request (and related applications) by DIRECTV

Enterprises, LLC (“DIRECTV”).⁸ In that proceeding, DIRECTV had entered into a similar arrangement with Telesat Canada (“Telesat”) whereby DIRECTV would relocate the DIRECTV 5 satellite to Telesat’s Canadian-licensed BSS slot at 72.5° W.L. from which DIRECTV would provide DBS service on an interim basis to the United States. The Commission approved that arrangement, despite finding that Canada did not meet the “effective competitive opportunities” test for comparable DBS services, because of the public interest benefits associated with increasing the number of markets able to receive local-into-local programming from DIRECTV.⁹ Similarly, the arrangement between Ciel and EchoStar would have the same public interest benefits by increasing the number of markets in which EchoStar would be able to provide local-into-local programming for its subscribers and by allowing EchoStar to transition “two-dish” markets to one dish for all local stations in each market.

In addition to the public interest benefits related to local-into-local service, granting this application would provide additional public interest benefits. It would also allow EchoStar to provide more high definition and other programming to compete more effectively with established cable operators in MVPD market. As the Commission is aware, EchoStar operates with significantly less bandwidth and programming capacity than is available to digital cable providers.

Lastly, grant of this application will allow EchoStar to offer DBS services to the United States from an orbital location that has not previously been available to serve the U.S. market,

⁸ *In the Matter of DIRECTV Enterprises, LLC, Request for Special Temporary Authority for the DIRECTV 5 Satellite*, DA 04-2526, Order and Authorization, SAT-STA-20040107-00002, Call Sign S2417 (released Aug. 13, 2004).

⁹ *Id.* at ¶ 23.

resulting in a net gain for U.S. consumers. All 32 DBS channels at the 129° W.L. orbital location are allotted by the International Telecommunications Union's Region 2 BSS plan to Canada. By moving EchoStar 5 to 129° W.L., EchoStar will be able to bring substantial new satellite capacity to bear in providing DBS service to U.S. consumers.

IV. WAIVER PURSUANT TO SECTION 304 OF THE ACT

In accordance with Section 304 of the Communications Act of 1934, as amended, 47 U.S.C. § 304, EchoStar hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

[REDACTED]

[REDACTED]

[REDACTED]

SATELLITE AGREEMENT

THIS SATELLITE AGREEMENT (the "Agreement") is made and effective as of the 14th day of May, 2004.

BETWEEN:

CIEL SATELLITE COMMUNICATIONS INC., a company incorporated under the laws of Canada, located in Ottawa, Ontario, Canada (hereinafter referred to as "Ciel")

AND:

ECHOSTAR SATELLITE L.L.C., a company organized under the laws of the United States, located in Englewood, Colorado, U.S.A. (hereinafter referred to as "EchoStar").

Ciel and EchoStar are from time to time herein referred to collectively as the "Parties" and individually as a "Party".

WHEREAS, Ciel is a Canadian carrier as defined in the *Telecommunications Act* (Canada) and a radiocommunication carrier as defined in the *Radiocommunication Act* (Canada) which will own satellite communications facilities which it intends to operate in Canada;

WHEREAS, EchoStar is licensed by the Federal Communications Commission ("FCC") in the United States to, among other things, operate BSS satellites to provide direct-to-home service to customers in the United States;

WHEREAS, EchoStar owns and operates certain BSS and other satellites (including the in-orbit BSS satellite known as EchoStar 5);

WHEREAS, Ciel intends to apply to Industry Canada for authorization to operate a BSS satellite at the 129° W.L. orbital location (the "129° W.L. Location"); and

WHEREAS, Ciel wishes to provide BSS satellite capacity to EchoStar at the 129° W.L. Location for delivery of direct-to-home services in the United States, and in furtherance thereof both Parties desire jointly to implement a plan that meets the following objectives:

- Deployment of EchoStar 5 or another in-orbit BSS satellite owned and operated by EchoStar (referred to herein as "EchoStar 5") at the 129° W.L. Location on an interim basis as soon as reasonably practicable and in accordance with any relevant time deadlines that may be determined by Industry Canada and, in any event, not later than the earlier of (i) sixty (60) days following receipt by Ciel of the 129° W.L. Licence (as defined below) and (ii) August 25, 2005, which is the date by

[REDACTED]

which a commercial BSS satellite must be placed in service at the 129° W.L. Location in accordance with the BSS satellite in-service date prescribed by the ITU;

[REDACTED]

[REDACTED]

NOW THEREFORE for mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following:

A. Ciel Undertakings.

1. Ciel agrees to use commercially reasonable efforts to secure all necessary licence(s) and authorizations from Canadian regulatory authorities to operate a satellite and utilize all 32 Ku-Band BSS frequencies at the 129° W.L. Location, including without limitation all necessary licence(s) and authorizations from Canadian regulatory authorities required for EchoStar to use a satellite located at the 129° W.L. Location for delivery of direct-to-home services in the United States (the "129° W.L. Licence"). In connection with the foregoing, Ciel agrees to file all documents and take all actions necessary to obtain the 129° W.L. Licence as soon as reasonably practicable. Ciel agrees to use commercially reasonable efforts to respond promptly to requests for further information related to the 129° W.L. Call for Expressions of Interest from Industry Canada or any other Canadian or other governing authority. Ciel agrees to consult with EchoStar during the Expression of Interest process. Ciel agrees that if any filing or submission made by Ciel during the Expression of Interest process mentions EchoStar or any of the undertakings set forth in this Agreement, then it shall obtain the prior approval of EchoStar before filing or submitting material to the regulatory authority, such approval not to be unreasonably withheld or delayed. Upon the request of Ciel, EchoStar agrees to provide reasonable support to assist Ciel in the process to obtain the 129° W.L. Licence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. EchoStar Undertakings.

1. Following receipt by Ciel of the 129° W.L. Licence, EchoStar agrees to use commercially reasonable efforts to secure all necessary licence(s) and authorizations from United States regulatory authorities (including without limitation the FCC and Department of State) to use a satellite located at the 129° W.L. Location for delivery of direct-to-home services in the United States ("FCC Approvals"). EchoStar agrees to consult with Ciel during the FCC Approvals process. EchoStar agrees that if any filing or submission made by EchoStar during the FCC Approvals process mentions Ciel or any of the undertakings set forth in this Agreement, then it shall obtain the prior approval of Ciel before filing or submitting material to the regulatory authority, such approval not to be unreasonably withheld or delayed. Upon the request of EchoStar, Ciel agrees to provide reasonable support to assist EchoStar in the FCC Approvals process, including without limitation providing reasonable support to assist EchoStar in demonstrating that the effective competitive opportunities (ECO-Sat) test has been satisfied.

2. Following receipt by Ciel of the 129° W.L. Licence, receipt by EchoStar of the FCC Approvals and execution of the Interim Satellite Services Agreement, EchoStar agrees to use commercially reasonable efforts to secure all necessary licence(s) and authorizations from United States regulatory authorities (including without limitation the FCC and Department of State) to relocate EchoStar 5 to the 129° W.L. Location as soon as reasonably practicable ("Relocation Approval").

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

KS

[Redacted]

[Redacted]

C. Mutual Undertakings.

1. Following receipt by Ciel of the 129° W.L. Licence and receipt by EchoStar of the FCC Approvals:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Handwritten initials]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

PSD
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[REDACTED]

[REDACTED]

E. General.

1. Entire Agreement; Waiver. This Agreement constitutes the entire agreement between the Parties, and supersedes and terminates all previous understandings, commitments or representations, concerning the subject matter hereof. The failure by a Party to insist upon strict performance of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature.

2. Approvals. This Agreement shall become effective upon the date first written above. Each Party agrees to use commercially reasonable efforts to cooperate with the other Party in its efforts to obtain the necessary regulatory approvals contemplated hereunder. In no event shall either Party have any liability to the other Party for failure to obtain such approvals after using commercially reasonable good faith efforts to do so.

3. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be sent by facsimile transmission, or by first class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the party to be notified, addressed to such party at the address set forth below, or sent by facsimile to the fax number set forth below, or such other address or fax number as such party may have substituted by written notice to the other party. The sending of such notice with confirmation of receipt thereof (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by mail or by overnight courier service) shall constitute the giving thereof.

If directed to Ciel:

Ciel Satellite Communications Inc.
5570 Pettapiece Crescent
Manotick, ON Canada K4M 1C5 Attention: Kevin Smyth Facsimile:
613.692.0943

If directed to EchoStar:

EchoStar Satellite L.L.C.
Fax: 303-723-1699

P.O. Box 6655 (for certified mail)
Englewood, Colorado 80155

9601 S. Meridian Blvd. (for overnight courier)
Englewood, Colorado 80112

Attention: David Bair, Vice President, Space Programs and Operations

[REDACTED]

[Handwritten initials]

[REDACTED]

with a copy to:

David K. Moskowitz, Executive Vice President, General Counsel and Secretary
(same address and fax number)

4. Limitation of Liability. Neither Party shall be liable to the other (or any third party) under this Agreement for any special, incidental, indirect or consequential damages or for loss of business, revenues or profits, even if advised of the possibility of any of the foregoing.

5. No Publicity. Except for (i) disclosures required by law, rule or regulation; (ii) disclosures by Ciel to Canadian regulatory authorities and disclosures by EchoStar to United States regulatory authorities that are necessary for each Party to fulfil its obligations hereunder, which for the avoidance of doubt shall remain subject to Ciel's obligation under Section A(1) to secure EchoStar's prior approval for certain disclosures and EchoStar's obligation under Section B(1) to secure Ciel's prior approval for certain disclosures; and (iii) disclosures to a Party's bankers, lawyers and investors, who have signed appropriate non-disclosure agreements and who have a bona fide need to know such information in connection with the business activities of the applicable Party, during the term of this Agreement and for a period of three (3) years thereafter neither Party may release items of publicity of any kind relating to the work performed or contemplated to be performed hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

6. Compliance with Law. The Parties agree that in carrying out their respective activities hereunder all their actions and those of the Parties' respective employees or agents shall be in compliance with all applicable laws and regulations.

7. Term. This Agreement shall commence on the date first set forth above and, [REDACTED]

8. Confidentiality. The Parties contemplate the exchange of certain confidential and proprietary information dealing with the subject matter of this Agreement. Each Party agrees to maintain all such information disclosed to it for purposes of this Agreement in strict confidence, using the same degree of care, but not less than reasonable care, to prevent disclosure of such information as such Party uses in respect of its own information of like importance. The Parties shall use such information solely for the purposes of this Agreement and not for any other purpose. The requirement to maintain the confidentiality of such information shall not extend to: (a) information which is in the public domain at the time of its disclosure or which subsequently comes into the public domain without violation of an obligation of confidence assumed hereunder; (b) information received from a third party without violation of an obligation of confidence to the disclosing party; (c) information which the recipient party can show to have

been in its possession at the time of disclosure; (d) information which the recipient party can show to have been independently developed without access to the information provided for purposes of this Agreement; or (e) disclosures required by law, rule or regulation.

9. No Joint Venture. This Agreement does not establish any joint undertaking, joint venture, partnership, agency or formal business entity of any kind and the rights and obligations of the Parties shall be as independent business entities.

10. Assignment. Neither Party may assign this Agreement or any portion of it without the prior written consent of the other Party, except that either Party may assign this Agreement to an affiliated entity without the consent of the other Party providing such affiliate (i) is at least as creditworthy as the assigning Party at the time the assigning Party originally signed this Agreement, and (ii) has the ability (including without limitation the financial wherewithal) to perform such Party's duties and obligations hereunder.

11. Amendment. This Agreement may only be amended if such amendment is evidenced in writing and signed by the authorized representatives of the Parties hereto.

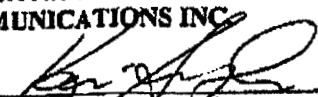
12. Force Majeure. Neither Party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of acts of God, war, governmental action (but specifically excluding any refusal, suspension, withdrawal or non-renewal of a licence essential for the Party's performance, if such refusal, suspension, withdrawal or non-renewal is a result of such Party's unexcused failure to undertake action required under this Agreement, or is the result of the willful misconduct or negligent act of such Party), strikes, riots, insurrection, fires, flood, storm, explosions, earthquake, epidemic, quarantine restriction, freight embargo, or any other event which is beyond the reasonable control of such Party, provided, however, that the Party whose performance is impacted will use commercially reasonable efforts to mitigate the effects of such force majeure.

13. Counterparts: Facsimile Signatures. This Agreement may be signed by facsimile and in counterparts, each of which shall constitute an original Agreement and all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Satellite Agreement effective as of the date first set forth above, notwithstanding the actual dates of execution.

CIEL SATELLITE
COMMUNICATIONS INC

By:


Name: KEVIN SMYTH
Title: CEO

EHOSTAR SATELLITE L.L.C.

By:


Name: Charles W. Egan
Title: President & CEO

200 Slater Street
Ottawa, ON K1A 0G8

Our File: 6215-22

FEB - 1 2005

Mr. Kevin B. Smyth
Chief Executive Officer
Ciel Satellite Communications Inc.
5570 Pettapiece Crescent
Manotick, Ontario K4M 1C5

Dear Mr. Smyth:

This is further to our letter of 1 October, 2004 in which Ciel Satellite Communications Inc. was required to demonstrate compliance with Canadian ownership and control requirements prior to the issuance of an approval in principle for the development and operation of a broadcasting-satellite space station at the 129°W orbital position.

The Department has reviewed and assessed the documentation relating to ownership and control that Ciel Satellite Communications Inc. has submitted. We note that the final corporate structure of the licensee will be that of a limited partnership, the Ciel Satellite Limited Partnership, the general partner of which is Ciel Satellite Communications Inc. Our review indicates that the partners of Ciel Satellite Limited Partnership are individually eligible to hold licences as radiocommunication carriers based on the information provided thus far, and subsequent discussions with and commitments by Ciel Satellite Limited Partnership and its partners.

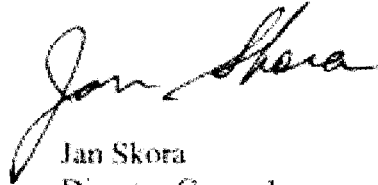
Therefore, I am pleased to provide Ciel Satellite Limited Partnership with our approval in principle to develop and operate a broadcast-satellite space station at the 129°W orbital position using the 12 GHz frequency band. This approval is subject to Ciel Satellite Limited Partnership providing the Department with the final ownership and control information for approval by the Department, and subject to the attached conditions of licence.

... 12

Canada

I look forward to the implementation of your service offerings in the coming years and the contributions your satellite will make toward connecting Canadians. In keeping with our commitment to open, fair and transparent licensing processes, this letter will be posted on the Department's Strategic website.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Jan Skora".

Jan Skora
Director General
Radiocommunications and
Broadcasting Regulatory Branch

Attachment

Attachment

Conditions of Licence for Ciel Satellite Limited Partnership (Ciel LP) BSS Satellite Operating at 129°W Orbital Position

Eligibility

1. Ciel LP shall conform on an on-going basis with the Canadian ownership and control requirements as set out for a radiocommunication carrier in section 10(2)(d) of the *Radiocommunication Regulations*.

Licence Transfer

2. This licence may not be transferred or assigned without full review of the application by the Department and the authorization of the Minister. For clarification and without limiting the generality of the foregoing, "transfer" includes any leasing, sub-leasing or other disposition of the rights and obligations of the licence, and also includes any change which would have a material effect on the ownership or control in fact of Ciel LP.

Serving Canadian Broadcasting Needs

3.
 - a) Ciel LP shall operate its interim and new satellite facilities as a Canadian telecommunications common carrier.
 - b) Notwithstanding condition 3(a), Ciel LP may assign up to 50 percent of the capacity of the new satellite to serve foreign broadcasting needs for the term of the licence.
 - c) Ciel LP shall retain a minimum of 50 percent of the capacity of the new satellite for Canadian broadcasting needs until the launch of the new satellite, and shall initiate a public "call for interest" to determine Canadian needs for this retained satellite capacity. This "call for interest" shall not close before the launch of the new satellite. In addition to the capacity identified in condition 3(b), should the retained capacity exceed contracted Canadian requirements, Ciel LP may also assign such excess retained capacity for service in other countries for the term of the licence.
 - d) Should Ciel LP apply to the Department to license a replacement for the new satellite, the Department may review the applicability of conditions 3(b) and 3(c).
4. The new satellite to be operated under this licence shall be capable of serving all regions of Canada visible from the assigned orbital position, including Northern Canada.

Milestones

5. Ciel LP shall meet all implementation milestones by the respective dates set out in the following table:

	Milestone	Date
1	Placement of an interim satellite into the authorized orbital position	25 August 2005
2	Submission to Department for approval of final design specifications for a new satellite to be operated at the authorized orbital position.	31 December 2005
3	Final signature of contracts for (1) the construction of the new satellite, and (2) the launch of the new satellite into the authorized orbital position by milestone 4	31 July 2006
4	Placement of the new satellite into the authorized orbital position.	31 December 2008

Capacity to Improve Connectivity

6. Ciel LP shall fulfill its commitment to provide one transponder (or equivalent) for the life of the new satellite, or other satellite capacity acceptable to the Department, free of charge for special initiatives, such as the National Satellite Initiative being delivered by Industry Canada, aimed at improving connectivity in under-served areas of Canada. Such special initiatives will be developed in consultation with the Department

International Coordination

7. Ciel LP shall, at its own expense, participate with the Department to effect the successful modification of the BSS frequency assignment plans of Appendix 30/30A of the ITU *Radio Regulations*, provide the Department, in a form acceptable to the ITU, with any required information, and be responsible for the payment of all ITU processing charges related to the submission of this information.
8. Ciel LP shall operate its satellites in accordance with the successful modification to the Appendix 30/30A plan and shall fulfill all commitments made by Canada pursuant to all international coordination and any other arrangements for the operation of a direct broadcast satellite facility in the 129° W orbital position.

Industrial Benefits

9. Ciel LP shall make fair and reasonable efforts to develop, promote and purchase satellite network components from Canadian manufacturers.

Operational Requirements

10. Ciel LP shall ensure the satellites operated under this licence are under its direction or control consistent with section 3(3)(b) of the *Radiocommunication Act*.
11. Ciel LP shall operate the satellites within the provisions of the ITU *Radio Regulations*, Canadian legislative and regulatory requirements, and Departmental spectrum policies.

Reporting

12. Semi-annually until the launch of the new satellite into the authorized orbital position, and annually thereafter, Ciel LP shall submit a detailed report to Industry Canada. This report shall include:
 - An update indicating progress made in all areas respecting this licence;
 - An update indicating continued compliance with all licence conditions;
 - An update on any negotiations undertaken pursuant to condition 7;
 - An update on activities related to improving connectivity in underserved areas of Canada;
 - Copies of any existing report for Ciel LP's fiscal year with respect to this authorization;
 - A current listing of all satellite capacity being made available through this authorization, the capacity assigned to Canadian service providers and others, including the parties to which it is assigned, and any unused capacity including the terms of its availability; and
 - An update on all aspects of design, procurement, construction, coordination and launch of the satellite facilities, as well as the "call for interest" to determine Canadian needs, until the new satellite has been put into service.

Licences and Licence Fees

13. Ciel LP shall obtain the necessary radio licences for the satellites prior to commencing operation, and Ciel LP shall pay applicable annual authorization fees in advance on or before March 31 of each year