

STEPTOE & JOHNSON^{LLP}

ATTORNEYS AT LAW

Pantelis Michalopoulos
202.429.6494
pmichalo@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

September 2, 2009

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

Re: **EchoStar-113° W.L. Ka-band Authorization**
File Nos. SAT-MOD-20070323-00055; SAT-LOA-20040803-00154; Call Sign S2636;
Withdrawal of Authorization and Request for Waiver

Dear Ms. Dortch,

EchoStar Corporation (“EchoStar”) surrenders its Ka-band authorization for the 113° W.L. orbital location. EchoStar has taken good faith efforts to commercialize this orbital location, but has made the business decision to surrender the authority despite good faith multi-player and multi-year efforts and investments to bring into commercial use this orbital location.

Specifically, EchoStar has explored a number of alternatives for utilizing the 113° W.L. orbital location to augment EchoStar’s sister company’s video subscription service. EchoStar has also examined providing satellite broadband services from 113° W.L. directly or through a partner satellite provider. The most recent efforts have centered on the government’s national broadband efforts. As part of the government’s broadband stimulus funding, EchoStar has submitted applications seeking federal support to bring affordable broadband services to unserved and underserved communities. The use of the 113° W.L. orbital location was contemplated as part of those stimulus efforts both independently as well as with prospective satellite partners. EchoStar has now decided that other orbital resources are better situated for EchoStar’s stimulus projects, prompting this decision to surrender the 113° W.L. authorization upon completion of that application process. The surrender will also allow the company to, among other things, focus its efforts on more expedited construction of satellites at other orbital

locations, including recently granted 17/24 GHz BSS satellites,¹ and efforts to meet the government's national broadband deployment efforts.

Importantly, this surrender is not evidence of a lack of interest in the Ka-band going forward. To the contrary, EchoStar was the first commercial U.S. provider to successfully launch a Ka-band satellite, EchoStar 9, and remains interested in the long-term utilization of the Ka-band.

This Surrender Should Not Be Treated as a Missed Milestone. EchoStar requests that this surrender not count as a "missed" milestone for purposes of the presumption of 47 C.F.R. § 25.159(d). EchoStar is surrendering its authorization in a timely manner, well in advance of the relevant launch milestone, October 8, 2009. The timing of this surrender is based on exhaustion of good faith efforts to commercialize this orbital resource and a corresponding business decision that other orbital locations and assets are better situated to meet both short- and long-term core objectives of expanding wholesale video capacity and related satellite services. This surrender, therefore, should not count towards the § 25.159(d) presumption, nor should it affect consideration of EchoStar's request to rebut or waive the presumption with respect to pending applications to supplement existing Fixed Satellite Service capacity at 85° W.L.²

EchoStar Requests The Release of its Performance Bond. EchoStar requests that the Commission grant a release of the performance bond submitted for this authorization³ and, to the extent required, a waiver in light of the Commission's statement that such bonds "will be payable if the licensee surrenders its license voluntarily before a milestone date."⁴ EchoStar is surrendering its license for good and

¹ See EchoStar Satellite Corporation, File No. SAT-LOA-20020328-00052, SAT-AMD-20080213-00043, SAT-AMD-20051118-00245, SAT-AMD-20080114-00020 (granted July 28, 2009); EchoStar Satellite Corporation, SAT-LOA-00051, SAT-AMD-20080114-00019, SAT-AMD-20080213-00042, SAT-AMD-20051118-00246 (granted July 28, 2009).

² See File No. SAT-LOA-20090528-00060.

³ See Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC (Oct. 29, 2004) (submitting \$3 million performance bond for the proposed EchoStar-113° W.L. satellite); Rider to Bond (dated Mar. 30, 2006) (submitting bond rider to reduce bond amount to \$2.25 million because EchoStar met the Contract Execution milestone); Rider to Bond (dated Dec. 15, 2006) (submitting bond rider to reduce bond amount to \$1.5 million because EchoStar met the Construction Design Review milestone); Rider to Bond (dated Jan. 2, 2008) (substituting EchoStar Holding Corporation for EchoStar Satellite L.L.C. as the named principal on the performance bond); Rider to Bond (dated Jan. 25, 2008) (substituting EchoStar Corporation for EchoStar Holding Corporation as the named principal on the performance bond); Rider to Bond (dated May 16, 2008) (bond rider to reduce amount to \$750,000 because EchoStar met the Commence Physical Construction milestone).

⁴ *Amendment of Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, at ¶ 171 (2003).

