

March 15, 2004

SAT-STA-20030903-00300
DIRECTV Enterprises, LLC
DIRECTV 3

Mr. Thomas S. Tycz
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

S2417 **SAT-STA-20040107-00002** IB2004000022
DIRECTV ENTERPRISES, LLC

Re: DIRECTV Enterprises, 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

Dear Mr. Tycz:

In connection with the above-referenced request for special temporary authority ("STA"), DIRECTV, Inc. ("DIRECTV") hereby supplies the attached redacted copies of agreements with Telesat Canada ("Telesat") previously submitted to the Commission in connection with the above-referenced matter. In October 2003 and in subsequent letters, DIRECTV had requested that its documentation with Telesat receive confidential treatment pursuant to Sections 0.457 and 0.459 of the Commission's Rules. Given the passage of time and subsequent events, DIRECTV and Telesat now have determined that the attached redacted agreements can be submitted for the record in this proceeding.

We are aware that Pegasus Development Corporation ("Pegasus") has filed a Freedom of Information Act ("FOIA") Request requesting the right to inspect documents submitted in this proceeding by DIRECTV on October 7, 2003, December 17, 2003, December 18, 2003, and January 6, 2004.¹ DIRECTV is filing today a letter with the Commission's Office of Managing Director reaffirming that the documents contain highly sensitive trade secret and commercial and financial information and that DIRECTV and Telesat would suffer substantial competitive harm if this documentation and the information contained therein were disclosed.² Thus, to the extent

¹ Letter from Bruce Jacobs, Counsel to Pegasus, to Managing Director, FCC (Jan. 27, 2004) ("Pegasus FOIA Request").

² *Critical Mass Energy Project v. Nuclear Regulatory Comm'n.*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("*Critical Mass*") (defining "confidential" to apply to information "of a kind

not already made public in the attached documents and prior filings,³ this information is protected from disclosure under Exemption 4 of FOIA.⁴

In its FOIA Request, Pegasus also expressed a willingness "to accept release of the documents subject to a protective order."⁵ For the reasons set forth below, DIRECTV opposes release of the materials pursuant to a protective order.

The documentation requested by Pegasus that was submitted by DIRECTV to the Commission on October 7, 2003 and December 17, 2003 was expressly superseded by the documentation submitted to the Commission on January 13, 2004⁶ -- as evidenced by the unredacted portions of the attached agreements. DIRECTV therefore requests that the Commission not act upon or otherwise consider the October 7, 2003 and December 17, 2003 documentation in this proceeding, other than the fact of its disclosure to the Commission, and hereby requests that the superseded documents be returned to DIRECTV.

As for DIRECTV's submission to the Commission on January 13, 2004, DIRECTV has now introduced into the record a redacted copy of this documentation. The redacted agreements provide Pegasus with all the necessary information about the transaction to satisfy Pegasus' asserted interest. In its FOIA Request, Pegasus asserts that it seeks information regarding whether "DIRECTV's arrangement at [82° W.L.] could have a direct impact on Pegasus' operations."⁷ On February 19, 2004 and again today, DIRECTV has made public the material in the January 13, 2004 confidential filing that is directly responsive to Pegasus' information request. These materials demonstrate that DIRECTV 3 will exclusively serve Canada when located in a Canadian orbital location.

that would not customarily be released to the public"); *National Parks & Conservation Assoc. v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

³ DIRECTV has made available in the public file the unredacted version of the December 18, 2003 letter. Letter from James Barker, Counsel for DIRECTV, Inc. to Marlene Dortch, Secretary, FCC (Feb. 19, 2004).

⁴ See 5 U.S.C. § 522(b)(4). The Commission adopted Section 0.457(d) to implement FOIA Exemption 4. See 47 C.F.R. § 0.457(d)(2) ("If it is shown that the materials contain trade secrets or commercial, financial or technical data which would customarily be guarded from competitors, the materials will not be made routinely available for public inspection.").

⁵ Pegasus FOIA Request at 3, n.12.

⁶ The Pegasus FOIA Request erroneously requests documents allegedly submitted to the Commission on January 6, 2004. There were no documents submitted to the Commission on this date. DIRECTV assumes that Pegasus meant the documents submitted on January 13.

⁷ Pegasus FOIA Request at 1, n.1.

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Moreover, as Pegasus correctly notes, the FCC issues a protective order permitting limited disclosure of competitive valuable information only where the information is "relevant to specific public interest purposes."⁸ DIRECTV has disclosed all of the information relevant to a public interest determination regarding the relocation of DIRECTV 3 to a Canadian orbital location where it will provide service exclusively to Canadian customers and offer back-up capacity. The remaining materials, for which DIRECTV is requesting confidential treatment, relate to the considerations for relocation of DIRECTV 3 and DIRECTV 5 to Canadian orbital locations. Relocation of DIRECTV 5 is the subject of a separate FCC proceeding. Thus, these materials are not relevant to the FCC's public interest determination in this case or, as noted above, Pegasus' ability to protect its asserted interest in this proceeding.⁹ Accordingly, there is no need for a protective order in this case.

DIRECTV, with the concurrence of Telesat, appreciates the opportunity to provide the redacted information for the record and is hopeful that it will facilitate continued and prompt processing of the STA.

Respectfully submitted,



Gary M. Epstein
James H. Barker
of LATHAM & WATKINS LLP

Counsel for DIRECTV Enterprises, LLC

cc: Marlene Dortch, Secretary, FCC
Managing Director, FCC
Jay Whaley, FCC
Jennifer Hindin, Esq.
Bruce Jacobs, Esq.
Susan Eid, DIRECTV

⁸ Pegasus FOIA Request at 3, n.12. See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, at ¶9 (1998).

⁹ Given that Pegasus has missed the deadlines for petitioning against or offering comment upon the above-referenced STA, Pegasus also is not formally an interested party in this proceeding, with standing to use any of the information it has requested.

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made in duplicate and entered into as of the 23rd day of December 2003.

BETWEEN: TELESAT CANADA, a company incorporated under the laws of Canada, located at 1601 Telesat Court, Gloucester, Ontario K1B 5P4, Canada.
(hereinafter referred to as "Telesat")

AND: DIRECTV ENTERPRISES, L.L.C., a limited liability company incorporated under the laws of the State of Delaware, located at 2230 East Imperial Highway, El Segundo, California 90245, in the United States of America.

(hereinafter referred to as "DIRECTV")

Telesat and DIRECTV together are hereinafter referred to as "the Parties".

WHEREAS, Telesat is licensed by Industry Canada to operate satellites at the 91° W.L. and 82° W.L. orbital slots and Industry Canada has filed the necessary modification to the ITU's plan for the Broadcast Satellite Service ("BSS") and associated feederlinks in ITU Region 2 as defined in Article 4 of Appendix 30 and Article 4 of Appendix 30A respectively of the ITU Radio Regulations Edition 2001 (the "ITU Plan") for Telesat to operate at such slots (together, the "Telesat Orbitals"); and

WHEREAS, Telesat owns and operates at the Telesat Orbitals the Nimiq 1 and Nimiq 2 satellites and such satellites are utilized by Bell ExpressVu Inc. to provide services into Canada; and

WHEREAS, Industry Canada

[additional commercial transaction not presented for approval in this proceeding redacted]

WHEREAS, DIRECTV is licensed by the Federal Communications Commission ("FCC") in the United States to operate DBS satellites at the 101 W.L. orbital location, the 110 W.L. orbital location, and the 119 W.L. orbital location (collectively and together with such other locations as DIRECTV may be licensed to operate, the "DIRECTV Orbitals") and provide direct-to-home service to customers in the United States (the "DIRECTV Service"); and

WHEREAS, DIRECTV owns and operates certain DBS satellites (including the in-orbit DBS satellites known as DIRECTV 3 and and provides the DIRECTV Service from the DIRECTV Orbitals; and

[additional commercial transaction not presented for approval in this proceeding redacted]

WHEREAS, the Parties entered into a previous Memorandum of Agreement, dated as of the 27th day of August 2003 (the "Original MOA"); and

WHEREAS, [additional commercial transaction not presented for approval in this proceeding redacted]

and

WHEREAS, the Parties now wish to modify the terms of the Original MOA, and have this Agreement supercede completely the Original MOA;

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

A. Intention of the Parties.

It is the intention of the Parties to undertake the following transactions:

1.

[additional commercial transaction not presented for approval in this proceeding redacted]

2. Lease of DIRECTV 3 Satellite [financial or trade secrets redacted]

DIRECTV has agreed to lease to Telesat the DIRECTV 3 satellite for use by Telesat at one of the Telesat Orbitals to provide back up capacity for either of the Nimiq 1 or Nimiq 2 satellites used to provide service for Bell Express Vu, or to provide such other capacity to Canadian customers, in either case, for use in Canada as Telesat shall determine. In furtherance of such agreement, the Parties negotiated and executed the "Satellite Relocation & Lease Agreement", dated as of September 11, 2003, such agreement was superseded completely by a lease dated as of December 23, 2003 a copy of which is attached hereto as Exhibit B (the "DIRECTV 3 Lease Agreement"). The Parties acknowledge that the FCC has not yet granted approval of DIRECTV's "Special Temporary Authority" submitted on September 3, 2003, which approval will permit DIRECTV to relocate the DIRECTV 3 satellite to one of the Telesat Orbitals and allow commencement of the DIRECTV 3 Lease Agreement.

3. [additional commercial transaction not presented for approval in this proceeding redacted]

B. Telesat Undertakings.

1.

a. [additional commercial transaction not presented for approval in this proceeding redacted]

b.

c.

d. [additional commercial transaction not presented for approval in this proceeding redacted]

2.
DIRECTV with the following rights:

Telesat hereby agrees to provide

a.
[additional commercial transaction not presented for approval in this proceeding redacted]

b. In connection with

[additional commercial transaction not presented for approval in this proceeding redacted]

c.

d.

3. Lease of DIRECTV 3 Satellite. Telesat has applied for and received the necessary Regulatory Approvals from the Canadian government, including from Industry Canada and the Canadian Radio-television & Telecommunications Commission, necessary or appropriate to relocate DIRECTV 3 and to permit Telesat to operate such satellite at the 82 W.L. orbital location. If it is determined that the DIRECTV 3 satellite will be located at the 91 W.L. orbital location, Telesat will apply for the necessary Regulatory Approvals from the Canadian government, including from Industry Canada and the Canadian Radio-television & Telecommunications Commission, necessary or appropriate to relocate DIRECTV 3 and permit Telesat to operate such satellite at the 91 W.L. orbital location.

[financial or trade secrets redacted]

C. DIRECTV's Undertakings.

1. Lease of DIRECTV 3 Satellite. As set out in Section A. paragraph 2, the

parties have negotiated and agreed to the DIRECTV 3 Lease Agreement.

2. Regulatory Approvals for the DIRECTV 3 Lease and Relocation. DIRECTV has applied for and shall continue to use reasonable commercial efforts promptly to obtain any necessary Regulatory Approvals from the United States government, including from the FCC and Department of State, necessary to relocate DIRECTV 3 to the Designated Orbital Location and permit Telesat to operate the satellite under authority from Industry Canada.

[financial or trade secrets redacted]

3. DIRECTV Lease Terms. The lease terms governing the Parties' rights and obligations with respect to the lease of the DIRECTV 3 satellite shall be as set forth in the DIRECTV 3 Lease Agreement.

[additional commercial transaction not presented for approval in this proceeding redacted]

4.

5.

[additional commercial transaction not presented for approval in this proceeding redacted]

D. Joint Undertakings.

1.

[additional commercial transaction not presented for approval in this proceeding redacted]

b. [additional commercial transaction not presented for approval in this proceeding redacted]

c.

3.

E. General.

1. Entire Agreement; Exhibits. This Agreement, including the Exhibits hereto, constitutes the entire agreement between the Parties, and supersedes and terminates all previous understandings, commitments or representations concerning the subject matter hereof. For clarity, as stated in Section A. Paragraph 2 the Parties have entered into the DIRECTV 3 Lease Agreement, such agreement supersedes this Agreement with respect to the subject matter thereof.

2. Approvals. The Parties' obligations under this Agreement are subject to each Party receiving appropriate Regulatory Approvals from the U.S. and Canadian government agencies from which approval must be obtained in order for each Party to undertake the obligations agreed to herein, including without limitation, approval from the U.S. FCC and Department of State and Industry Canada. In no event shall either Party have any liability for failure to obtain such approvals after good faith efforts to do so.

3. Notices. All notices under this Agreement shall be in writing and shall be effective if delivered by hand to an officer of the recipient Party or sent by registered mail or by facsimile transmission and received by the recipient Party, at the addresses indicated below:

If directed to Telesat:

Telesat Canada
1601 Telesat Court
Gloucester, Ontario
K1B 5P4 Canada
Telephone: (613) 748-8700
Facsimile: (613) 748-8784
Attention: Paul Bush
cc: Vice President Law

If directed to DIRECTV:

DIRECTV Enterprises, LLC
2230 E. Imperial Highway
El Segundo, CA 90245
USA
Telephone: (310) 535-5031
Facsimile: (310) 964-4991
Attention: Michael Palkovic
cc: General Counsel

Any notice shall be deemed to have been provided if delivered by hand, when delivered, if sent by registered mail, upon receipt, and if sent by facsimile transmission, upon receipt of successful transmission. Either Party may change its address for notice by notice to the other Party in accordance with this paragraph.

4. Limitation of Liability, Indemnity.

[financial or trade secrets redacted]

5.

[additional commercial transaction not presented for approval in this proceeding redacted]

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

7. Term: Termination.

[financial or trade secrets redacted]

For clarity, in no event shall termination of this Agreement be construed as a termination of the DIRECTV 3 Lease Agreement.

8. Confidentiality. The Parties executed a Confidentiality and Nondisclosure Agreement on August 27, 2003, which they intend to govern the disclosures made between the Parties in respect of this Agreement and the Transactions contemplated hereby.

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. Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the Province of Ontario, without regard to its conflicts law and the Parties agree to submit to the exclusive jurisdiction of the courts thereof.

11. Assignment. Neither Party may assign this Agreement or any portion of it without the prior written consent of the other Party,

[financial or trade secrets redacted]

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

13. 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 . [financial or trade secrets redacted]

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 Parties will use commercially reasonable efforts, including the implementation of business continuity measures, to mitigate the effects of such force majeure.

IN WITNESS WHEREOF the Parties have executed this Memorandum of Agreement as of the date indicated above, notwithstanding the actual dates of execution.

TELESAT CANADA

DIRECTV ENTERPRISES, LLC

By: _____

By:  _____

Its: _____

Its: Michael W. Palkovic
Chief Financial Officer

By: _____

Date: 12/23/03

Its: _____

Date: _____

EXHIBIT A

[additional commercial transaction not presented for approval in this proceeding redacted]

[additional commercial transaction not presented for approval in this proceeding redacted]

[additional commercial transaction not presented for approval in this proceeding redacted]

[additional commercial transaction not presented for approval in this proceeding redacted]

[additional commercial transaction not presented for approval in this proceeding redacted]

[additional commercial transaction not presented for approval in this proceeding redacted]

EXHIBIT B

DIRECTV 3 LEASE AGREEMENT

TELESAT CANADA and DIRECTV ENTERPRISES, LLC.

SATELLITE RELOCATION & LEASE AGREEMENT

Dated as of December 23, 2003

CONFIDENTIAL

All information contained in or disclosed by this document is confidential and proprietary to Telesat Canada and DIRECTV Enterprises, LLC. By accepting this material the recipient agrees that this material and the information contained therein will be held in confidence and will not be reproduced in whole or in part except for purposes of this Agreement. It is understood that no right is conveyed to reproduce or have reproduced any item herein contained without express written permission from Telesat Canada or DIRECTV Enterprises, LLC, as the case may be.

FINAL

SATELLITE RELOCATION & LEASE AGREEMENT

TELESAT CANADA, a company incorporated and existing under the laws of Canada, having its head office located at 1601 Telesat Court in the City of Ottawa, in the Province of Ontario, Canada, hereinafter referred to as "Telesat";

DIRECTV ENTERPRISES, LLC., a limited liability company incorporated under the laws of the state of Delaware, located at 2230 East Imperial Highway, El Segundo, California, 90245, in the United States of America, hereinafter referred to as "DIRECTV";

WHEREAS Telesat wishes to lease an existing DIRECTV satellite to occupy the 82 °W.L orbital position or the 91 °W.L orbital position;

WHEREAS DIRECTV is the owner of certain DBS satellites;

WHEREAS Telesat and DIRECTV signed a Memorandum of Agreement ("MOA") pursuant to which the parties agreed to undertake certain transactions

WHEREAS in connection with the transactions outlined in the MOA, Telesat wishes to lease a satellite from DIRECTV and, in order to effect such lease, DIRECTV also agrees to relocate the Satellite to the orbital position designated by Telesat for Telesat's use as established herein.

NOW THEREFORE in consideration of the mutual agreements contained in this Agreement, the Parties agree as follows:

1.0 LEASE CONDITIONS

- 1.1 Description. Subject to the conditions stated herein, DIRECTV agrees to lease the satellite known as DIRECTV 3, or a DBS satellite with a comparable life and performance parameters as DIRECTV 3 (as determined by DIRECTV in its reasonable judgment) (the "Satellite") for Telesat's use for the duration of the Term (as defined below) of this Agreement and subject to the terms and conditions hereof. DIRECTV shall use reasonable commercial efforts to relocate the satellite to the orbital location designated by Telesat which shall be either the 82 °W.L. orbital position or the 91 °W.L. orbital position (the "Designated Orbital Location").

FINAL

- 1.2. Consents to Satellite Relocation. DIRECTV will use reasonable commercial efforts to obtain necessary approvals from the United States government and/or United States regulatory bodies to relocate the Satellite to the Designated Orbital Location and to permit Telesat to operate the satellite from the Designated Orbital Location. Obtaining such approvals is a condition precedent to DIRECTV's obligation to relocate the Satellite and to transfer operation of the Satellite to Telesat. Telesat will be responsible for filing any necessary application with and obtaining any necessary consents from Canada's Department of Industry ("Industry Canada") for approval to maintain and operate the Satellite at the Designated Orbital Location and provide service to Canada therefrom, entering any necessary or appropriate coordination agreements, and making any necessary or appropriate ITU filings in connection therewith. Each party agrees to provide reasonable support to the other in obtaining such approvals and to share with the other in advance copies of any filings that mention the other party or describe the terms of this lease or the relocation of the Satellite.
- 1.3. Satellite Relocation. Once the approvals set forth in Article 1.2 above for Satellite relocation have been received, DIRECTV shall use reasonable commercial efforts to relocate the Satellite to the 82°W.L. orbital position as soon as technically practicable, with the goal of: (i) completing the relocation within 7 days of receipt of such approval and (ii) testing of the Satellite within 21 days of the relocation. Telesat will advise DIRECTV upon the Satellite's relocation to the 82°W.L., as to whether 82°W.L. or 91°W.L. will be the Designated Orbital Location. Once the Satellite is relocated to the Designated Orbital Location, it shall not be moved to any other location without: (i) obtaining any necessary United States or Canadian governmental approvals; or (ii) the prior written permission of DIRECTV except that DIRECTV's permission shall not be required if the relocation is to provide emergency restoration for Bell ExpressVu Inc's services in the event of a failure of all or part of the payload of Nimiq 1 or Nimiq 2. Maintenance of the Satellite at the Designated Orbital Location for the Term hereof is subject to DIRECTV's rights under Section 5.1 hereof.
- 1.4. Direction of Operations. During the period the Satellite is located at the Designated Orbital Location, Telesat shall exercise direction, and control over the use of the Satellite, according to Telesat's direction to ensure proper colocation with either N1 or N2. DIRECTV, through its affiliated company PanAmSat, shall use reasonable commercial efforts to keep the Satellite at the Designated Orbital Location by performing telemetry, tracking and control functions ("TT&C Functions") until the date Telesat has obtained and installed the necessary ground equipment to take over the TT&C Functions, which in no event shall exceed one year following the date when testing of the Satellite is completed in the Designated Orbital Location subject to DIRECTV delivering the necessary technical information as set out in Exhibit A and operational products as may be agreed by the Parties to enable Telesat to properly control the spacecraft in a timely manner, and subject to DIRECTV obtaining any necessary United States export licenses to do so. Thereafter Telesat shall perform the TT&C Functions

until the End Date, the termination of this Agreement, or until DIRECTV commences the relocation of the Satellite specified elsewhere in this Agreement, whichever occurs first, at which time DIRECTV shall resume the performance of TT&C functions.

[financial or trade secrets redacted]

2.0 TERM

- 2.1 Term of Agreement. The term ("Term") of this Agreement shall commence as of the execution date (the "Commencement Date") and, subject to the early termination provisions of this Agreement, the Agreement shall continue until the end of life of the Satellite (the "End Date"). As used herein, the "end of life" shall be the point at which the satellite is taken out of commercial operation in accordance with Section 5.2 herein. This End Date is contemplated to be September 2010.

[financial or trade secrets redacted]

3.0 TELESAT PAYMENT

- 3.1 [financial or trade secrets redacted]

4.0 USE OF SATELLITE

- 4.1 Right to Use. Telesat shall have the exclusive right to use of the capacity of the Satellite for the Term of this Agreement subject to the terms and conditions hereof. Subject to the terms of, and after the time that DIRECTV receives, an export license from the U.S. government, DIRECTV shall provide the technical characteristics (SFD, EIRP and G/T) of the Satellite and any other technical information required by Telesat to enable transmission to and from the Satellite. Telesat shall use the same standard of care and prudence in its use and operation of the Satellite as Telesat exercises in respect of its own satellites. Once the Satellite has reached its end of life as defined above in Section 2.0, DIRECTV and Telesat shall agree a plan to deorbit the satellite.
- 4.2 Non-interference and Use Restrictions. Telesat's transmission to and from the Satellite shall comply with all applicable laws, rules, regulations, procedures and orders of Canada, and the ITU.

[financial or trade secrets redacted]

- 4.3 Terrestrial Facilities. Telesat shall be responsible for the provision, installation, operation, maintenance and for securing all necessary licenses and/or authorizations for all earth station facilities and equipment (the "Telesat Provided Facilities"), for transmitting signals to, or receiving signals from, the Satellite. Any provision by DIRECTV to Telesat of earth station or other terrestrial facilities or services shall be subject of a separate agreement.
- 4.4 Third Party Use. The Satellite is being leased to Telesat for use at one of the Telesat Orbitals to provide back up capacity for either of the Nimiq 1 or Nimiq 2 satellites used by Telesat to provide service for Bell ExpressVu, or for Telesat to provide such other capacity to Canadian customers, in either case, for use solely in Canada as Telesat shall determine. For the avoidance of doubt, any offering by Telesat, Bell ExpressVu, or any other person or entity, of capacity on the Satellite for use by a U.S. entity or for service to or within the United States shall require DIRECTV's prior written consent not to be unreasonably withheld but in no event may Telesat or Bell ExpressVu knowingly use or allow any other person or entity to knowingly use the Satellite, directly or indirectly, to provide direct-to-home services to or within the United States. Once Telesat has taken over TT&C Functions as contemplated in Section 1.4 herein, Telesat shall operate and control the Satellite at all times during this lease Agreement and in no event may Telesat sublease or subcontract operational control of the Satellite to any third party without DIRECTV's prior written approval. Telesat shall be responsible to DIRECTV for any transmission(s) by any person or entity directly or indirectly deriving the right to transmit to the Satellite from Telesat to the same extent as Telesat would be for Telesat's own transmissions and references to this Agreement with respect to Telesat's responsibilities to DIRECTV regarding Telesat's transmissions shall be interpreted accordingly.
- 4.8 DIRECTV's Exclusion of Warranties. The Satellite is expressly leased on an "as is" basis. DIRECTV makes no representation or warranty regarding the Satellite, and any such warranties are expressly excluded and disclaimed, including any warranty of merchantability or fitness for a particular purpose, and any other warranty implied by statute or rule of law.

4.9

[financial or trade secrets redacted]

[financial or trade secrets redacted]

5.0 TERMINATION RIGHTS

5.1 Early Termination.

- (a) At DIRECTV's option, this Agreement may be terminated by DIRECTV and the Satellite returned upon DIRECTV providing 5 days written notice to Telesat of the occurrence of the second Catastrophic Failure of any two DIRECTV satellites during the Term.

[financial or trade secrets redacted]

- (b) This agreement shall terminate on December 31, 2006 if

[financial or trade secrets redacted]

Upon such termination, (i) DIRECTV will transfer and convey title to the DIRECTV 3 satellite to Telesat, (ii) Telesat will assume full responsibility for the operation and control of the DIRECTV 3 satellite and all obligations and liabilities associated therewith, and (iii) DIRECTV no longer will have any responsibility to perform TT&C Functions, or to remove the satellite from commercial operation or from orbit under any circumstances whatsoever.

5.2 Taking the Satellite Out of Commercial Operation. The Satellite shall be taken out of commercial operation at the Designated Orbital Location if Telesat or DIRECTV reasonably determines during the Term of this Agreement that there is less than 30 kg of usable fuel remaining on the Satellite and therefore there is no longer sufficient fuel to operate the Satellite and maintain geosynchronous orbit of the Designated Orbital Location within plus or minus 0.1 degrees, as well as allowing sufficient fuel for de-orbiting the Satellite at least 300 km above geostationary orbit. In this event, DIRECTV will provide such supporting analysis to Telesat and the Parties shall mutually agree to an operational plan to move the Satellite from the Designated Orbital Location to another location or to deorbit the Satellite. Telesat shall also have the right to require DIRECTV (subject to receipt of any necessary governmental approvals) to use commercially reasonable efforts to remove the Satellite from the Designated Orbital Location promptly after receipt of written notice from Telesat. This Agreement shall terminate effective the date the Satellite is taken out of commercial operation by DIRECTV or the date it is removed from the Designated Orbital Location by DIRECTV, as applicable.

5.3 Rights and Obligations upon Termination. The termination of this Agreement shall extinguish all of DIRECTV's obligations to relocate and keep the Satellite located at the Designated Orbital Location for Telesat as set forth herein, but shall not relieve either Party of any obligation that may have arisen prior to such termination, nor shall termination affect the parties' obligations under Article 7 (Limitation of Liability and Indemnification), Article 9 (Confidentiality) and Article 11.1 (Applicable Law and Jurisdiction provisions) which shall survive the termination of this Agreement.

6.0 FORCE MAJEURE

6.1 Excused Conduct. A "Force Majeure Event" means any act of God, governmental action (whether in its sovereign or contractual capacity) or any other circumstance reasonably beyond the control of such Party, including but not limited to, receive earth station sun outage, meteorological or astronomical disturbances, earthquake, hurricane, snowstorm, fire, flood, strikes, labor disputes, war, civil disorder, epidemics, quarantines, embargoes.

6.2 Neither Party shall be held liable or deemed to be in default under the Agreement, in the event of a Force Majeure Event. Each Party shall use reasonable commercial efforts to remedy or resolve any Force Majeure Event claimed by such Party.

7.0 LIMITATION OF LIABILITY

7.1

[financial or trade secrets redacted]

7.2

7.3 Injunctive Relief. Nothing herein shall be deemed to preclude either party from seeking injunctive relief, if necessary, in order to prevent the other from willfully or intentionally breaching its obligations under this Agreement or to compel the other to perform its obligations under this Agreement.

8.0 CONFIDENTIALITY

8.1 Non-disclosure. The parties have executed a Confidentiality and Nondisclosure Agreement on the date hereof, a copy of which is attached as Exhibit B hereto and is incorporated by reference.

9.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 General. Subject to the understanding that certain consents described in Section 1.2 herein are conditions precedent to certain obligations hereunder, DIRECTV and Telesat, each, represents and warrants to, and agrees with the other that:

(a) Authority. It has the right, power and authority to enter into and perform its obligations under this Agreement.

(b) Approvals. It will seek to obtain promptly all requisite government authorizations, as applicable, for performance of this Agreement.

(c) Consents. The fulfillment of its obligations and conduct hereunder will not constitute a material violation of any existing applicable law, rule, regulation or order of any governmental authority, or Agreement to which it is subject. All public or private consents, permissions, agreements, licenses or authorizations

necessary for the performance of its obligations under this Agreement to which it is subject have been obtained, or it will use all reasonable efforts to obtain such, in a timely manner.

(d) No Broker. It does not know of any broker, finder or intermediary involved in connection with the negotiations and discussions incident to the execution of this Agreement, or of any broker, finder or intermediary who might be entitled to a fee or commission upon the consummation of the service contemplated by this Agreement.

11.0 MISCELLANEOUS

11.1 Applicable Law, Entire Agreement and Effectiveness, Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the Province of Ontario, without regard to its conflicts law and the Parties agree to submit to the exclusive jurisdiction of the courts thereof. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning this subject matter. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a prior writing signed by an authorized officer of each party. This Agreement shall not be binding or effective on any party until fully executed by both parties hereto.

11.2 Severability. Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law. If any provision of this Agreement shall be invalid or unenforceable, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirements.

11.3 Non-Waiver of Breach. Either party may specifically waive any breach of this Agreement by the other party; provided that no such waiver shall be binding or effective unless in writing and signed by an authorized officer of the Party to be bound and no such waiver shall constitute a continuing waiver of similar or other breaches. A waiving Party may at any time, upon notice given in writing to the breaching Party, direct future compliance with the waived term or terms of this Agreement, in which event the breaching Party shall comply as directed from such time forward.

11.4 Notices. All notices and other communications from either Party to the other, except as otherwise stated in this Agreement, shall be in English writing and shall be deemed received upon actual delivery or completed facsimile addressed to the other party as follows:

If directed to Telesat:

Telesat Canada
1601 Telesat Court
Gloucester, Ontario
K1B 5P4 Canada
Telephone: (613) 748-0123
Facsimile: (613) 748-8784
Attention: Paul Bush
cc: Vice President Law

If directed to DIRECTV:

DIRECTV Enterprises, LLC
2230 E. Imperial Highway
El Segundo, CA 90245
USA
Telephone: (310) 535-5031
Facsimile: (310) 964-4991
Attention: Chief Financial Officer
cc: General Counsel
Senior VP, Engineering

Each Party will advise the other of any change in the address, designated representative or telephone or facsimile number.

11.5 Headings. The descriptive headings of the Articles of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

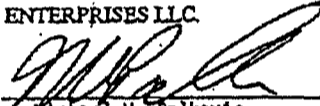
11.6 Documents. Subject to applicable legal compliance, each party agrees to provide information and to execute, and if necessary, to file with the appropriate governmental entities and international organizations, such documents as the other Party shall reasonably request in order to carry out the purpose of this Agreement.

11.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF each of the Parties hereto has duly executed this Agreement under the hands of its proper officers duly authorized in that behalf as of the day and year first above written.

DIRECTV ENTERPRISES LLC

TELESAT CANADA

BY: 
NAME: Michael W. Paikovic
TITLE: Chief Financial Officer

BY: _____
NAME: _____
TITLE: _____
BY: _____
NAME: _____
TITLE: _____
DATE: _____

12/23/03

Exhibit A
Required Documentation

[financial or trade secrets redacted]

FINAL

[financial or trade secrets redacted]

FINAL

[financial or trade secrets redacted]

[financial or trade secrets redacted]

[financial or trade secrets redacted]

FINAL

[financial or trade secrets redacted]

FINAL

[financial or trade secrets redacted]

FINAL

EXHIBIT B

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made in duplicate and effective as of the 27 day of August, 2003.

BETWEEN: TELESAT CANADA, a company incorporated pursuant to the laws of Canada, located at 1501 Telesat Court, Ottawa, Ontario, Canada K1B 5P4 (hereinafter referred to as "Telesat")
THE PARTY OF THE FIRST PART

AND: DIRECTV Enterprises, LLC, a limited liability company incorporated under the laws of the State of Delaware, located at 2230 East Imperial Highway, El Segundo, California 90245 (hereinafter referred to as "DIRECTV")
THE PARTY OF THE SECOND PART

WHEREAS Telesat is engaged in the business of satellite telecommunications and owns or has in its possession certain valuable confidential information relating thereto; and

WHEREAS DIRECTV is engaged in the business of providing digital satellite television services and owns or has in its possession certain valuable confidential information relating thereto; and

WHEREAS the parties are willing to exchange their respective confidential information subject to certain terms and conditions outlined below in order to permit each other only to evaluate the other party's confidential information for the purpose(s) of discussions with respect to: the lease of a DirectV satellite (the "Purpose"); and

WHEREAS the parties wish to protect any such information which is disclosed in accordance with the terms and conditions of the Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the mutual covenants and agreements herein contained the parties hereto agree as follows:

1.0 DEFINITIONS

1.1 For the purposes of this Agreement, the following terms shall have the meanings ascribed to them herein:

(a) "Confidential Information" shall mean all information relating to the Purpose that is either:

i)

ii) [financial or trade secrets redacted]

Notwithstanding the foregoing, the term "Confidential Information" shall not include any information which:

i)

ii) [financial or trade secrets redacted]

iii)

iv)

v)

(b) "Discloser" shall mean the party to this Agreement who discloses any Confidential Information.

(c) "Recipient" shall mean the party to this Agreement to whom Confidential Information is disclosed.

2.0 TERM OF NON-USE AND NON-DISCLOSURE OBLIGATIONS

2.1 The non-use and non-disclosure obligations of Recipient, as set forth in Paragraph 3 below,

[financial or trade secrets redacted]

2.2 This Agreement and the obligations hereunder.

2.3 All Confidential Information [financial or trade secrets redacted]

3.0 AGREEMENT OF NON-USE AND NON-DISCLOSURE

3.1 Recipient shall only use Confidential Information for the Purpose. Recipient shall only circulate Confidential Information to its own employees, who have a need to know in furtherance of the aforesaid. Each document containing Confidential Information which is circulated to employees of the Recipient shall bear a legend to the effect that the information contained therein is Confidential to Discloser and that such information shall not be disclosed to other persons.

3.2 Except as provided herein Recipient shall not disclose Confidential Information or any part thereof to any other person, corporation, or other organization without obtaining the prior written consent of Discloser.

3.3

[financial or trade secrets redacted]

3.4

3.5

3.6

4.0

4.1

5.0 [financial or trade secrets redacted]

5.1

6.0 GOVERNING LAW

6.1 This Agreement shall be governed in accordance with the laws in force in:

7.0

7.1 [financial or trade secrets redacted]

7.2

8.0 CAPTIONS

8.1 The titles of the paragraphs of this Agreement are for convenience of reference purposes only and shall not be referred to in the construction or interpretation of any provision hereof.

9.0

9.1

[financial or trade secrets redacted]

10.0 ENTIRE AGREEMENT

10.1 This Agreement constitutes the entire Agreement between the parties in respect of the matters dealt with herein. All previous agreements, understandings and representations, whether written or oral between the parties have been superseded by this Agreement unless herein expressly specified or allowed.

IN WITNESS WHEREOF, the parties hereto have duly caused this Agreement to be executed as of the date first above written notwithstanding the actual dates of execution.

Date: Aug 27/03

TELESAT CANADA

Per: [Signature]
Title: Treasurer and V.P. Finance,
Per: [Signature]
Title: V.P. Law

Date: August 27, 2003

DIRECTV ENTERPRISES, L.P.C.

Per: [Signature]
Title: Michael N. Palkovic
Per: Chief Financial Officer
Title: