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Policy Branch  
International Bureau

1200 EIGHTEENTH STREET, NW  
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301  
WWW.HARRISWILTSHIRE.COM

Int'l Bureau

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Front Office

ATTORNEYS AT LAW

July 6, 2004

BY HAND DELIVERY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RECEIVED

JUL - 6 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *DIRECTV, Inc., Request for Special Temporary Authority to Relocate  
DIRECTV 5 to 72.5° W.L. and to Conduct Telemetry, Tracking and  
Command ("TT&C") Operations for an Interim Period  
File No. SAT-STA-20040107-00002*

Dear Ms. Dortch:

On January 13, 2004, DIRECTV Enterprises, LLC,<sup>1</sup> on behalf of itself and its subsidiaries and affiliates ("DIRECTV"), requested that the Commission withhold certain documents submitted in connection with an STA request for the DIRECTV 3 satellite from public inspection and accord them confidential treatment pursuant to sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459. On March 15, 2004, DIRECTV submitted a redacted copy of the documents submitted on January 13 for inclusion in the public record of that proceeding.<sup>2</sup>

On March 22, 2004, the International Bureau issued a Protective Order in the DIRECTV 3 STA proceeding that covered those and other related documents that had been submitted to the Commission.<sup>3</sup> Under the terms of the Protective Order, confidential documents could be used in both the DIRECTV 3 STA proceeding and the

<sup>1</sup> DIRECTV Enterprises, LLC is a licensee in the high-power Direct Broadcast Satellite service and a wholly owned subsidiary of The DIRECTV Group, Inc.

<sup>2</sup> See Letter from Gary M. Epstein to Thomas S. Tycz, FCC File No. SAT-STA-20030903-00300 (dated March 15, 2004).

<sup>3</sup> See *DIRECTV Enterprises, LLC*, 19 FCC Rcd. 5255 (Int'l Bur. 2004) ("Protective Order").

**HARRIS, WILTSHIRE & GRANNIS LLP**

Marlene H. Dortch  
July 6, 2004  
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above-referenced proceeding, among others.<sup>4</sup> After reviewing non-redacted versions of the documents subject to the Protective Order, Pegasus Development Corporation (“Pegasus”) filed Reply and Supplemental Comments that were based, in part, on such confidential information.<sup>5</sup>

DIRECTV continues to believe that its request for confidential treatment of the documents submitted on January 13 are fully justified. However, in the interest of facilitating review of the transaction proposed herein, DIRECTV submits herewith a redacted version of the January 13 documents that has been revised such that the vast majority of the provisions of those documents cited in the Pegasus Reply will now be available in the public record of this proceeding.<sup>6</sup>

Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,



William M. Wiltshire  
Michael D. Nilsson  
HARRIS, WILTSHIRE & GRANNIS LLP  
1200 18<sup>th</sup> Street, N.W.  
Washington, DC 20036

*Counsel for DIRECTV Enterprises, LLC*

cc: Thomas Tycz (without enclosure)  
Jay Whaley (with enclosure)  
Karl Kensinger (with enclosure)  
Bruce Jacobs (with enclosure)  
Kirsten Embree (with enclosure)  
Pantelis Michalopoulos (with enclosure)  
Howard Symons (with enclosure)  
Phillip Spector (with enclosure)

<sup>4</sup> *Id.*, Appendix A at ¶¶ 2-3.

<sup>5</sup> See Reply and Supplemental Comments, FCC File Nos. SAT-STA-20040107-00002, SAT-STA-20030903-00300, and MB Docket No. 03-124 (dated April 5, 2004)(“Pegasus Reply”).

<sup>6</sup> DIRECTV continues to believe that prior agreements that were superceded by the documents submitted on January 13 are not relevant to this proceeding, and accordingly has not submitted redacted versions thereof.

**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, 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")

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,

**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

**REDACTED**

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

WHEREAS.

REDACTED

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.

REDACTED

2. **Lease of DIRECTV 3 Satellite.**

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 ExpressVu, 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.

REDACTED

3. Relocation and Use of DIRECTV 5 Satellite. In order to preserve Canada's ITU priority for the modification to the ITU Plan related to the use of BSS frequencies at the 72.5 Location and thereby permit the use of the 72.5 Location for service into all of Canada and into the United States, Canada is required to meet certain conditions related to the 72.5 Location by July 14, 2005, including to have a satellite with certain technical parameters in operation at the 72.5 Location by July 14, 2005. Subject to the successful launch and in-orbit testing of the DIRECTV 7S satellite, DIRECTV has agreed to relocate the DIRECTV 5 satellite to the 72.5 Location in order to meet the ITU requirements, subject to approval of U.S. and Canadian government authorities, as described herein. It is the Parties' intention that DIRECTV will use the DIRECTV 5 satellite at the 72.5 Location until the time as set forth in Section B. paragraph 2, and that DIRECTV shall exercise one of the options set forth in Section C. paragraph 5. hereof.

It is in an effort to accomplish the foregoing three transactions (the "Transactions") that the Parties agree to their individual and joint undertakings described herein. Each Party understands and agrees that neither party will be required to continue pursuing the Transactions if either party fails to obtain, or it becomes reasonably certain that a party will not obtain, the necessary regulatory approvals, licenses and authorizations from various governmental entities in the United States and Canada for the applicable Transaction, as more fully described herein ("Regulatory Approvals") and comply with all applicable requirements of law. Each Party shall be solely responsible for obtaining all of its respective Regulatory Approvals in a timely manner and at its expense (except where otherwise expressly provided for herein) to enable completion of the Transactions, and each Party shall provide the other party with necessary information and cooperation in the process of seeking Regulatory Approvals.

**B. Telesat Undertakings.**

1.

a.

b.

c.

REDACTED

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REDACTED

d.

2. \_\_\_\_\_  
DIRECTV with the following rights:

Telesat hereby agrees to provide

a.

REDACTED

Confidential

b.

REDACTED

c.

d. It is the intent of the Parties

REDACTED

(i) the lease of DIRECTV 3 to Telesat for the remainder of the commercially useful life of DIRECTV 3 as defined in the DIRECTV 3 Lease Agreement and (ii) the benefits conferred on Telesat from the option described in Section C. paragraph 5.

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.

REDACTED

C. DIRECTV's Undertakings.

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

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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.

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.

REDACTED

4

5. DIRECTV Option Relative to 72.5 Location. Between execution of this Agreement and December 1, 2005 (the "Option Period"), DIRECTV shall exercise one of the following options: (i) enter into a transponder purchase agreement with Telesat to purchase 32 high-power transponders on a new satellite to be built by Telesat for the 72.5 Location with a "clawback" right for Telesat to sell up to 16 transponders on the satellite to Canadian customers at any time up to the date of launch of the new satellite (the "Purchase Option"); or (ii) on the condition that Telesat has not identified by September 30, 2008 a new partner to develop the 72.5 Location for use in the United States and plans to locate a satellite at the 72.5 Location, DIRECTV shall grant to Telesat a lease of the DIRECTV 5 satellite (the "Lease Option") on terms substantially similar to the DIRECTV 3 Lease Agreement except for the following: (A) the lease term shall be for a



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period of time commencing on the expiration of DIRECTV's Transponder Right Period and terminating 4 years and 6 months thereafter; (B) such lease shall be subject to the terms of Section D.1.b hereof; (C) such lease shall be for Telesat's use of the DIRECTV 5 satellite solely at the 72.5 Location and solely for providing service in Canada, and at no time may Telesat knowingly, directly or indirectly through third parties, provide direct-to-home broadcast services into the United States; and (D) if Telesat locates another satellite at the 72.5 Location then the DIRECTV 5 lease shall terminate immediately and DIRECTV 5 shall be immediately returned to DIRECTV following transfer of traffic from DIRECTV 5 to the new Telesat satellite, which transfer shall occur no later than 45 days following the arrival of such satellite. DIRECTV agrees that prior to expiration of any DIRECTV 5 lease agreement with Telesat that DIRECTV will discuss with Telesat a purchase option in respect of the DIRECTV 5 satellite, however, the obligations of the Parties in this respect shall be to engage in good faith discussions for a period of thirty (30) days and neither Party is hereby making any commitment to the other to sell or purchase the DIRECTV 5 satellite. During the first six months of the Option Period, Telesat shall not seek or entertain offers from any other person or entity for use of the capacity at the 72.5 Location. For clarity, in the event the Parties have not executed a mutually agreeable transponder purchase agreement by December 01, 2005 (or waived applicability of that deadline), DIRECTV shall be deemed to have exercised the foregoing Lease Option, provided, however, that if Telesat has identified a new partner for use of the 72.5 Location in the United States or located a new satellite at the 72.5 Location, then DIRECTV shall not be obligated to exercise the Lease Option and the Parties' obligations under this MOA shall terminate on the date DIRECTV's Transponder Rights terminate.

**D. Joint Undertakings.**

1.

a.

REDACTED

Confidential

b.

**REDACTED**

c.

**REDACTED**

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.

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5.

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.

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.

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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,

REDACTED

12. Amendment. This Agreement may only be amended if such amendment is evidenced in writing and signed by the authorized 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,

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: \_\_\_\_\_

**Confidential**

**EXHIBIT A**

**72.5 CANADIAN AUTHORIZATION**



Industry Canada Industrie Canada

300 Slater Street  
Ottawa, ON K1A 0C8

Our file: 6215-20-1

DEC 17 2003

Mr. Ted Ignacy  
Vice President - Finance and Treasurer  
Telesat Canada  
1601 Telesat Court  
Gloucester, Ontario  
K1B 5P4

Dear Mr. Ignacy,

I want to thank you for participating in the Department's *Call for Interest in Broadcasting Satellite Orbital Positions*. As you know, 11 broadcasting positions were available for assignment at 17 GHz, while 3 positions were available at 12 GHz. The Department invited expressions of interest with the intention of assigning positions to those qualified applicants with substantive plans that would see satellites implemented within certain time frames to provide capacity to serve Canada and beyond.

Only one 12 GHz orbital position will be awarded at this time, and I am pleased to provide Telesat Canada with our approval in principle to develop and operate a broadcast-satellite space station at the 72.5°W orbital position using the 12 GHz frequency band. This approval is subject to Telesat providing the Department with an update on Telesat's ownership and control information for approval by the Department, and subject to the attached conditions of licence.

Also, modification to the ITU plan set out in Appendix 30 and Appendix 30A of the ITU *Radio Regulations* to accommodate the operation of your planned satellite will be required. While the Department will attempt to achieve the most favourable conditions possible for achieving this modification, the Department cannot provide any assurance or guarantee as to the ultimate success of the effort, nor foresee any limitations or restrictions that may need to be placed upon the satellite network as a result.

.../2

Canada

- 2 -

Finally, the Department is very encouraged by the amount of interest received in 12 GHz positions. Given this interest, the Department will soon be re-opening the Call for interest in the 2 remaining 12 GHz positions. We encourage your participation in this future process. At this time, the Department is still considering the interest received in the 17 GHz orbital positions.

Please accept my warmest congratulations. I look forward to the implementation of your service offerings in the coming years and the contributions your satellites 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 Strategis website.

Yours sincerely,



Jan Skora  
Director General  
Radiocommunications and  
Broadcasting Regulatory Branch

Attachment



Attachment

**Conditions of Licence for Telesat Canada (Telesat)  
12 GHz BSS Satellite Operating at 72.5°W Orbital Position**

**Licence Eligibility**

1. Telesat 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 Telesat.

**Serving Canadian Broadcasting Needs**

3.
  - a) Telesat shall operate the interim and new satellite facilities as a Canadian telecommunications common carrier.
  - b) Notwithstanding condition 3(a), Telesat 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) Telesat shall retain a minimum of 50 percent of the capacity of the new satellite for Canadian broadcasting undertakings 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. Should the retained capacity exceed identified Canadian requirements, Telesat may assign such excess retained capacity for service in other countries for the term of the licence.
  - d) Should Telesat 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. A minimum of 50 percent of the transponders on 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. Telesat shall meet all implementation milestones by the respective dates set out in the following table:

	Milestones	Date
1	Placement of an interim satellite into the authorized orbital position.	14 July 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 December 2006
4	Placement of the new satellite into the authorized orbital position.	31 December 2008

### Capacity to Improve Connectivity

6. Telesat must direct a minimum of two percent of adjusted gross revenues resulting from the operation of its satellite at the 72.5W orbital position towards 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 with the Department.

### International Coordination

7. Telesat 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 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. Telesat must fulfill all commitments made by Canada pursuant to all international coordination arrangements for the operation of a direct broadcast satellite facility in the 72.5° W orbital position.

### Industrial Benefits

9. Telesat must make fair and reasonable efforts to develop, promote and purchase satellite network components from Canadian manufacturers.

### **Operational Requirements**

10. Telesat must operate the satellite within the provisions of the *ITU Radio Regulations*, Canadian legislative and regulatory requirements, and Departmental spectrum policies.

### **Reporting**

- 11 a) Telesat must submit a detailed annual report to Industry Canada. This annual report must 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 Telesat's fiscal year with respect to this authorization; and
  - 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.
- b) These annual reports are to be augmented with semi-annual interim reports providing an update on all aspects of design, procurement, construction, coordination and launch of the satellite facilities until the new satellite has been put into service.

### **Licence Fees**

12. Telesat must pay applicable annual authorization fees in advance on or before March 31 of each year.

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**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**

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SATELLITE RELOCATION & LEASE AGREEMENT

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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 in connection with developing a new orbital location for use by both companies;

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").

- 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.

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,

REDACTED

3.0 TELESAT PAYMENT

3.1

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.

REDACTED



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

REDACTED

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.

REDACTED

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

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

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

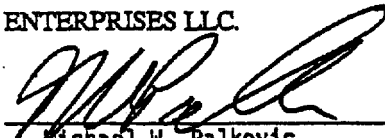
Each Party will advise the other of any change in the address, designated representative or telephone or facsimile number.

- 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. Palkovic  
TITLE: Chief Financial Officer

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

12/23/03

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

Exhibit A

REDACTED

**REDACTED**



**REDACTED**

**REDACTED**

**REDACTED**

**REDACTED**



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 1601 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 DirectTV satellite (the "Purpose"); and

REDACTED

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)

REDACTED

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

i)

ii)

iii)

REDACTED

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.

2.2 This Agreement and the obligations hereunder.

**REDACTED**

2.3 All Confidential Information.

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

3.4

3.5

3.6

**REDACTED**

4.0

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5.0

REDACTED

5.1

6.0 GOVERNING LAW

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

7.0

REDACTED

7.1

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

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.

TELESAT CANADA

Date: Aug 27/03

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

DIRECTV ENTERPRISES, LLC

Date: August 27, 2003

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