

COPY

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February 4, 2005

RECEIVED

FEB - 4 2005

BY HAND DELIVERY

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

Federal Communications Commission
Office of Secretary

Re: Request for Blanket Authority to Operate 1,000,000 Earth Stations to Receive DBS Programming from the Canadian BSS orbital slot at 129° W.L. and Request for Special Temporary Authority To Move EchoStar 5 to 129° W.L. and to and Conduct Telemetry, Tracking and Command Operations in order to Relocate EchoStar 5 to this Orbital Location; File Nos. SES-LFS-20050203-00133 and SES-STA-20050203-00018

REQUEST FOR CONFIDENTIAL TREATMENT

Dear Ms. Dortch:

EchoStar Satellite L.L.C. ("EchoStar"), pursuant to the provisions of Sections 0.457 and 0.459 of the Commission's Rules governing submission of confidential materials, 47 C.F.R. §§ 0.457, 0.459, respectfully requests that the unredacted Satellite Agreement between Ciel Satellite Communications Inc. ("Ciel") and EchoStar Satellite L.L.C. (dated May 14, 2004) ("Agreement") be afforded confidential treatment and not be placed in the Commission's public files of the above-referenced applications. EchoStar has already supplied the Commission with a public, redacted version of the Agreement, and this request for confidential treatment relates only to the portion of the Agreement that was redacted from the public version.¹

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Both the public, redacted version, which was filed in the proceedings referenced above, and the confidential unredacted version of the Agreement are included with this request for confidential treatment.

The redacted portions of the Agreement address further commercial arrangements that have not yet been completed and future obligations of the parties related to the use of the 129° W.L. orbital location. That material qualifies as “commercial or financial information” that “would customarily be guarded from competitors” regardless of whether or not such materials are protected from disclosure by a privilege. *See* 47 C.F.R. § 0.457(d); *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (“[W]e conclude that financial or commercial information provided to the Government on a voluntary basis is ‘confidential’ for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.”); *see also* *DIRECTV, 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 (application in which the FCC accepted redacted contract as part of record).

As an initial matter, most businesses do not publicly reveal supply contracts that enable them to provide their end product in the market. Thus, almost all of the specific terms in such an agreement would be the type of commercial information that “would not customarily be released to the public” and should be treated as confidential. Companies routinely guard information about their future plans or operations from their competitors. Finally the fact the redacted information in the Agreement is the type of information that would “would customarily be guarded from competitors” is demonstrated by the No Publicity and Confidentiality provisions of the Agreement (Sections E.5 and E.8) and the fact that the parties considered the agreement confidential and proprietary. Thus, the Commission should treat the redacted information as confidential under Section 0.457(d).

In addition, the redacted portions of the Agreement also contain highly sensitive information that if disclosed could place both EchoStar and Ciel at a competitive disadvantage, including specific information regarding future actions and obligations. There are a number of entities who would stand to benefit competitively from any knowledge of the redacted commercial terms included in the Agreement.

In support of this request, and pursuant to 47 C.F.R. § 0.459(b), EchoStar hereby states as follows:

1. The information for which confidential treatment is requested includes information on further commercial arrangements that have not yet been completed and future obligations of the parties related to the use of the 129° W.L. orbital location. As noted above, EchoStar has already filed a redacted version of the Agreement, and this request for confidential treatment pertains only to those provisions of the Agreement that are redacted from the public version.
2. The redacted information is being submitted as part of EchoStar’s application for blanket authority to operate 1,000,000 earth stations to receive DBS service from the Canadian BSS orbital location at 129° W.L. and its request for special

temporary authority to relocate its EchoStar 5 satellite to the Canadian BSS orbital location at 129° W.L.

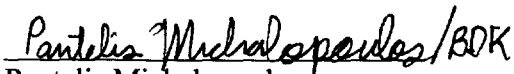
3. The redacted portions of the Agreement contain sensitive commercial information. Specifically, the redacted information addresses further commercial arrangements that have not yet been completed and future obligations regarding the use of the 129° W.L. orbital location. This information is commercial information that has not been made public and is not available to EchoStar's and Ciel's competitors.
4. The redacted information pertains to the provision of multichannel video programming. The multichannel video programming distribution ("MVPD") market is a competitive market. *See, e.g., In the Matter of Annual Assessment in the Market of the Delivery of Video Programming*, MB Docket No. 04-227, FCC 05-13 (Released: Feb. 4, 2005). EchoStar faces competition primarily from DirecTV, a larger digital broadcast satellite provider, and cable television providers. These competitors could potentially use the redacted information to gain an advantage in the MVPD market.
5. Disclosure of the redacted information could result in substantial competitive harm to EchoStar and Ciel. The redacted information regarding future operations at the 129° W.L. orbital location would give EchoStar's and Ciel's competitors advanced notice of future plans that have not previously been made public. This would allow these competitors to take steps to counter whatever advantage EchoStar and Ciel may gain in the market based on the future operations in the 129° W.L. orbital location. In addition, the redacted information regarding further commercial arrangements that have not yet been completed could provide EchoStar's and Ciel's competitors with the ability to negatively impact these further commercial arrangements.
6. EchoStar takes significant measures to ensure that this confidential information is not disclosed to the public.
7. The redacted material for which non-disclosure is sought is not available to the public.
8. EchoStar requests that the redacted materials be withheld from disclosure for an indefinite period. Disclosure of this information at any time could jeopardize the competitive positions of EchoStar and Ciel.
9. Finally, EchoStar notes that a denial of its request that this information be kept confidential would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future. The ability of a government agency to continually obtain confidential information was behind the legislative purpose in developing exemptions from the Freedom of Information Act. *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992)

(“Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government’s] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.”). The U.S. Court of Appeals for the D.C. Circuit has recognized a “private interest in preserving the confidentiality of information that is provided the Government on a voluntary basis.” *Id.* at 879. The Commission should extend a similar recognition to the redacted materials.

EchoStar requests that the Commission return the Agreement if its request for confidentiality is denied. *See* 47 C.F.R. § 0.459(e). To the extent that the Commission concludes that the disclosure of some or all of the redacted terms should be made available to the parties to this proceeding, EchoStar would be willing to discuss the terms of a Protective Order and provide a somewhat less redacted version of the Agreement for review by outside counsel for those parties.

Respectfully submitted,

David K. Moskowitz
Executive Vice President and General Counsel
EchoStar Satellite L.L.C.
9601 South Meridian Boulevard
Englewood, CO 80112
(303) 723-1000


Pantelis Michalopoulos
Philip L. Malet
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036
(202) 429-3000

Counsel for EchoStar Satellite L.L.C.

Enclosures

CONFIDENTIAL

SATELLITE AGREEMENT

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

BETWEEN:

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

AND:

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

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

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

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

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

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

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

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

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

- Deployment of a new BSS satellite (the "New BSS Satellite") to be procured, owned and operated by Ciel at the 129° W.L. Location on a permanent basis as soon as reasonably practicable and in accordance with any relevant time deadlines that may be determined by Industry Canada; and
- Development of the 129° W.L. Location to enable Ciel to provide EchoStar with additional BSS capacity to permit EchoStar to expand its direct-to-home service in the United States, and to provide additional satellite capacity to Ciel for provision in Canada to Canadian broadcasting undertakings and other Canadian customers.

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

A. Ciel Undertakings.

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

2. From the date first set forth above until this Agreement is terminated pursuant to Section A(4), B(5), C(2), D(1) or E(7), Ciel agrees not to directly or indirectly solicit, initiate or participate in any way in any discussions or negotiations with, or provide any information to, or enter into any agreement with any other person or entity concerning the same or similar subject matter of this Agreement for the use of capacity at the 129° W.L. Location except discussions for the sale of satellite capacity to Canadian businesses as contemplated in this Agreement.

3. The obligations of Ciel pursuant to this Agreement and pursuant to each of the Satellite Relocation and Lease Agreement, Interim Satellite Services Agreement and New Satellite Services Agreement (each as defined below) (collectively referred to as the "Definitive Agreements") shall be subject to all terms and conditions contained in the 129° W.L. Licence (such terms and conditions hereinafter referred to as the "129° W.L. Licence Conditions").

4. Ciel shall have the right to terminate this Agreement and shall have no further obligations hereunder (with the exception of Sections E(4), E(5) and E(8), which shall survive and continue in full force and effect) if the 129° W.L. License Conditions or FCC Approval Conditions (as defined below), in Ciel's reasonable commercial judgment, materially adversely impact Ciel's ability to realize the benefits anticipated in the Definitive Agreements or creates material additional burdens upon Ciel's business.

B. EchoStar Undertakings.

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

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

3. From the date first set forth above until this Agreement is terminated pursuant to Section A(4), B(5), C(2), D(1) or E(7), EchoStar agrees not to directly or indirectly solicit, initiate or participate in any way in any discussions or negotiations with, or provide any information to, or enter into any agreement with any other person or entity relating to obtaining the 129° W.L. Licence.

4. The obligations of EchoStar pursuant to this Agreement and pursuant to each of the Definitive Agreements shall be subject to all terms and conditions contained in the FCC Approvals (such terms and conditions hereinafter referred to as the "FCC Approval Conditions").

5. EchoStar shall have the right to terminate this Agreement and shall have no further obligations hereunder (with the exception of Sections E(4), E(5) and E(8), which shall survive and continue in full force and effect) if the License Conditions or FCC Approval Conditions, in EchoStar's reasonable commercial judgment, materially adversely impact EchoStar's ability to realize the benefits anticipated in the Definitive Agreements or creates material additional burdens upon EchoStar's business.

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C. Mutual Undertakings.

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

(a) EchoStar and Ciel shall enter into a satellite lease and relocation agreement (the "Satellite Lease and Relocation Agreement") pursuant to which EchoStar shall agree to (i) relocate EchoStar 5 to the 129° W.L. Location as soon as reasonably practicable following receipt of the Relocation Approval and in accordance with any relevant time deadlines that may be determined by Industry Canada, and (ii) lease EchoStar 5 to Ciel. Throughout the term of the Satellite Lease and Relocation Agreement, Ciel shall have the exclusive right to use, resell or otherwise make available to third parties the capacity of EchoStar 5, subject to the terms and conditions of the Satellite Relocation and Lease Agreement and the Interim Satellite Services Agreement. EchoStar shall have the right to terminate the lease of EchoStar 5 to Ciel (and to terminate the Interim Satellite Services Agreement) upon the occurrence of a (a) catastrophic failure with respect to any satellite in the EchoStar fleet (which shall be deemed to include any and all satellites owned, operated, controlled, leased or otherwise accessed by EchoStar and its affiliates), or (b) a series of events having a catastrophic effect on the EchoStar fleet when viewed in its entirety, in each case as determined by EchoStar in its reasonable commercial judgment.

(b) EchoStar and Ciel shall execute an interim BSS satellite services agreement (the "Interim Satellite Services Agreement") relating to EchoStar 5 pursuant to which Ciel shall agree to provide to EchoStar the full available capacity of EchoStar 5 for delivery by EchoStar of direct-to-home services in the United States.

(c) Ciel agrees to procure, launch, insure and perform in-orbit testing of the New BSS Satellite in accordance with any relevant time deadlines that may be determined by Industry Canada.

(d) Prior to entering into vendor agreements to procure the New BSS Satellite, Ciel and EchoStar shall enter into a satellite services agreement (the "New Satellite Services Agreement") for the New BSS Satellite pursuant to which Ciel shall make available to EchoStar satellite capacity from the 129° W.L. Location for the delivery of direct-to-home service in the United States subject to any terms and conditions contained in the 129° W.L. Licence awarded by Industry Canada to Ciel regarding requirements imposed on Ciel to make available to Canadian satellite service providers service capacity on the New BSS Satellite. The parties will use reasonable commercial efforts to execute the New Satellite Services Agreement relating to the New BSS Satellite no later than 3 years prior to Ciel's permanent in service milestone date as specified by Industry Canada in the 129° W.L. Licence.

2. The Definitive Agreements shall reflect the terms, conditions (including approvals of Boards of Directors), and intent of this Agreement and shall contain customary terms, conditions, representations, warranties and covenants for each party that would be found in similar transactions and agreements. In addition to such terms and conditions, the parties agree that the Definitive Agreements shall contain additional material terms, conditions, representations,

warranties and covenants relating to each party's obligations in connection with the activities contemplated under this Agreement. Each Party confirms its agreement to use reasonable commercial efforts to negotiate and cooperate in good faith towards the preparation of mutually satisfactory final drafts of the Definitive Agreements within thirty (30) days of the filing with Industry Canada of the application for the 129° W.L. Licence by Ciel. Each Party further confirms its agreement to use reasonable commercial efforts to enter into the Definitive Agreements within thirty (30) days of the date of announcement of award to Ciel of the 129° W.L. Licence and receipt by EchoStar of FCC Approval. In the event that the Parties cannot for any reason negotiate, finalize and enter into the Definitive Agreements (including without limitation such additional material terms, conditions, representations, warranties and covenants) within thirty (30) days after the date of announcement of the award to Ciel of the 129° W.L. Licence and receipt by EchoStar of the FCC Approval, this Agreement shall terminate without further force and effect (with the exception of Sections E(4), E(5) and E(8), which shall survive termination and continue in full force and effect).

D. Telemetry, Tracking & Command.

1. Ciel and EchoStar shall enter into a telemetry, tracking and command agreement (the "TT&C Agreement") within thirty (30) days of announcement of the award to Ciel of the 129° W.L. Licence and receipt by EchoStar of FCC Approval, pursuant to which Ciel shall have the right to direct the telemetry, tracking and command of EchoStar 5 subject to EchoStar's rights pursuant to the Interim Satellite Services Agreement. The TT&C Agreement shall reflect the terms, conditions (including approvals of Boards of Directors), and intent of this Agreement and shall contain customary terms, conditions, representations, warranties and covenants for each party that would be found in similar transactions and agreements. In addition to such terms and conditions, the parties agree that the TT&C Agreement shall contain additional material terms, conditions, representations, warranties and covenants relating to each party's obligations in connection with the activities contemplated under this Agreement. Each Party confirms its agreement to use reasonable commercial efforts to negotiate and cooperate in good faith towards the preparation of a mutually satisfactory final draft of the TT&C Agreement within thirty (30) days of the filing with Industry Canada of the application for the 129° W.L. Licence by Ciel. Each Party further confirms its agreement to use reasonable commercial efforts to enter into the TT&C Agreement within thirty (30) days of the date of announcement of award to Ciel of the 129° W.L. Licence and receipt by EchoStar of FCC Approval. In the event that the Parties cannot for any reason negotiate, finalize and enter into the TT&C Agreement (including without limitation such additional material terms, conditions, representations, warranties and covenants) within thirty (30) days after the date of announcement of the award to Ciel of the 129° W.L. Licence and receipt by EchoStar of the FCC Approval, this Agreement shall terminate without further force and effect (with the exception of Sections E(4), E(5) and E(8), which shall survive termination and continue in full force and effect). Following the relocation of EchoStar 5 to the 129° W.L. Location, EchoStar shall operate EchoStar 5, including all telemetry, tracking and command functions, at the 129° W.L. Location until one month after Ciel has completed in-orbit testing on the New BSS Satellite to be procured, owned and operated by Ciel, or such earlier period as the Parties may agree.

Handwritten initials/signature.

2. Ciel intends to construct and operate telemetry, tracking and command facilities in Canada for the New BSS Satellite. Ciel shall operate the New BSS Satellite to be used at the 129° W.L. Location, including all telemetry, tracking and command functions, commencing upon launch of the New BSS Satellite to the 129° W.L. Location.

E. General.

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

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

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

If directed to Ciel:

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

If directed to EchoStar:

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

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

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

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

with a copy to:

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

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

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

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

7. Term. This Agreement shall commence on the date first set forth above and, unless terminated earlier pursuant to Section A(4), B(5), C(2) or D(1) above, this Agreement shall terminate (with the exception of Sections E(4), E(5) and E(8), which shall survive termination and continue in full force and effect): (i) on June 25, 2005, in the event that Ciel has not been granted the necessary authorizations to locate and operate a BSS satellite at the 129° W.L. Location on or before that date; (ii) upon Ciel being advised by Industry Canada that it has been unsuccessful in securing the 129° W.L. Licence; (iii) upon a final determination that one or more of the FCC Approvals has or have been denied; or (iv) upon execution of the Definitive Agreements and the TT&C Agreement, whichever occurs first.

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

[Handwritten initials]

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

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

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

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

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

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

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

CIEL SATELLITE
COMMUNICATIONS INC


ECHOSTAR SATELLITE L.L.C.

By:


Name: KEVIN SMYTH

Title: CEO

By:


Name: Charles W. Egan
Title: President & CEO

[REDACTED]

[REDACTED]

[REDACTED]

SATELLITE AGREEMENT

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

BETWEEN:

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

AND:

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

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

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

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

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

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

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

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

[REDACTED]

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

[REDACTED]

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

A. Ciel Undertakings.

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

[REDACTED]

[REDACTED]

[REDACTED]

B. EchoStar Undertakings.

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

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

[REDACTED]

[REDACTED]

[REDACTED]

BS

C. Mutual Undertakings.

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

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

RSB

[REDACTED]

with a copy to:

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

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

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

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

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

[REDACTED]

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

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

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

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

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

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

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

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

CIEL SATELLITE
COMMUNICATIONS INC.

By: 

Name: KEVIN SMYTH

Title: CEO

ECHOSTAR SATELLITE L.L.C.

By: 

Name: Charles W. Egan

Title: President & CEO