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Policy Branch
International Bureau

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Federal Communications Commission
Office of Secretary

Via HAND DELIVERY

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

Re: **EchoStar Satellite L.L.C. Application for Special Temporary Authority To Move
EchoStar 5 to 129° W.L. and To Conduct Telemetry, Tracking and Command Operations
During the Relocation to this Orbital Location (File Number: SAT-STA-20050203-00018)**

Dear Ms. Dortch,

Yesterday, EchoStar Satellite L.L.C. ("EchoStar") submitted its response to the International Bureau's April 4, 2005 request for additional information regarding the above-captioned application, together with a request that portions of "Attachment 1" to that response be treated as confidential and not for public inspection under 47 C.F.R. §§ 0.457 and 0.459. See Letter from Pantelis Michalopoulos, Counsel for EchoStar Satellite L.L.C. to Marlene H. Dortch, Secretary, FCC (May 11, 2005). Please find enclosed a redacted copy of "Attachment 1" for inclusion on the public record.

If you have any questions regarding this matter, please contact the undersigned.

Yours sincerely,

Pantelis Michalopoulos / Dean

Pantelis Michalopoulos
Counsel for EchoStar Satellite L.L.C.

Enclosure

**SATELLITE RELOCATION AND USE AGREEMENT
FOR THE 129° W.L. ORBITAL LOCATION**

THIS AGREEMENT between EchoStar Satellite L.L.C. ("EchoStar"), a limited liability company organized under the laws of Colorado, and Ciel Satellite Communications Inc. ("Ciel"), a corporation organized under the laws of Ontario, is made effective as of 11th May 2005 (the "Effective Date"). Defined terms used in this Agreement have the meanings specified herein. This Agreement constitutes the "Satellite Relocation and Lease Agreement", the "Interim Satellite Services Agreement" and, as regards the Satellite, the "TT&C Agreement" contemplated by the Satellite Agreement between the parties dated 14 May 2004.

ARTICLE 1. SCOPE

1.A. Relocation of EchoStar V Satellite. In order to preserve Canada's ITU priority with respect to the modification (CAN-BSS4A, 4B) to the ITU Region 2 Plan for BSS filed on or about 7 June 1996 by Industry Canada relating to the use by Ciel of BSS frequencies at the 129° W.L. orbital location (the "Orbital Location") and thereby permit the use of the Orbital Location for service into Canada and the United States, Canada is required to have a satellite with certain technical parameters brought into use at the Orbital Location by 25 August 2005. Subject to and in accordance with the terms and conditions stated herein, EchoStar has agreed to relocate the satellite known as "EchoStar V" (the "Satellite") to the Orbital Location in order for Ciel to meet the above-referenced ITU requirements.

1.B. Regulatory Matters.

1.B(1) 129° W.L. Licence. Ciel agrees to use commercially reasonable efforts [REDACTED] to preserve the AIP and to secure, as soon as reasonably practicable, all other Authorizations necessary for the Service Term from Industry Canada, all other Canadian Governmental Entities and the ITU to (a) relocate the Satellite to the Orbital Location, and (b) permit (i) TT&C functions for the Satellite at the Orbital Location to be performed from an EchoStar-licensed earth station in the United States, (ii) EchoStar to uplink from the United States to, and downlink into the United States from, the Satellite and the Ciel-2 Satellite using all of the 129° W.L. Frequencies at the Orbital Location, (iii) EchoStar to use the Satellite at the Orbital Location for the Intended Purpose, and (iv) [REDACTED] (collectively, the "129° W.L. Licence"). (The parties acknowledge and agree that the references in the foregoing clauses (iii) and (iv) to the Intended Purpose [REDACTED], respectively, are not intended and shall not be construed to foreclose EchoStar from use of the Satellite or the Ciel-2 Satellite for other authorized purposes.) 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 from Industry Canada, other Canadian Governmental Entities and the ITU. Ciel agrees to consult regularly with EchoStar during the regulatory process for the 129° W.L. Licence, and shall advise EchoStar on a timely basis of all material developments concerning such process. [REDACTED]

[REDACTED] Upon the request of Ciel, EchoStar agrees to provide reasonable support to assist Ciel in the regulatory process for the 129° W.L. Licence.

1.B(2) FCC Approvals. EchoStar agrees to use commercially reasonable efforts [REDACTED] to secure, as soon as reasonably practicable, all Authorizations necessary for the Service Term from United States Governmental Entities (including without limitation the FCC and Department of State) to (a)

relocate the Satellite to the Orbital Location, and (b) permit (i) TT&C functions for the Satellite at the Orbital Location to be performed from an EchoStar-licensed earth station in the United States, (ii) EchoStar to uplink from the United States to, and downlink into the United States from, the Satellite and the Ciel-2 Satellite using all of the 129° W.L. Frequencies at the Orbital Location, (iii) EchoStar to use the Satellite at the Orbital Location for the Intended Purpose, including without limitation all necessary blanket authorizations of earth stations (*i.e.*, for up to one million earth stations) seeking to receive direct-to-home transmissions in the United States from the Satellite at the Orbital Location, and (iv) [REDACTED], including without limitation all necessary blanket authorizations of earth stations (*i.e.*, for up to one million earth stations) seeking to receive direct-to-home transmissions in the United States from the Ciel-2 Satellite at the Orbital Location (collectively, the "FCC Approvals"). (The parties acknowledge and agree that the references in the foregoing clauses (iii) and (iv) to the Intended Purpose [REDACTED], respectively, are not intended and shall not be construed to foreclose EchoStar from use of the Satellite or the Ciel-2 Satellite for other authorized purposes.) In connection with the foregoing, EchoStar agrees to file all documents and take all actions necessary to obtain the FCC Approvals as soon as reasonably practicable. EchoStar agrees to use commercially reasonable efforts to respond promptly to requests for further information from United States Governmental Entities. EchoStar agrees to consult regularly with Ciel during the regulatory process for the FCC Approvals, and shall advise Ciel on a timely basis of all material developments concerning such process. [REDACTED]

[REDACTED] Upon the request of EchoStar, Ciel agrees to provide reasonable support to assist EchoStar in the regulatory process for the FCC Approvals.

1.B(3) Coordination.

1.B(3)(a) EchoStar agrees that its use of the Satellite at the Orbital Location shall be subject to the terms of the existing coordination conditions and restrictions. [REDACTED]

[REDACTED]

1.B(3)(b)

[REDACTED]

1.B(3)(c)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.B(3)(d)

[REDACTED]

1.B(4) Miscellaneous.

1.B(4)(a) Each party's obligations under this Agreement are subject to such party receiving all Authorizations necessary for such party to undertake the obligations to which it has agreed herein, including without limitation all such Authorizations from the FCC, the United States Department of State and Industry Canada.

[REDACTED]

1.B(4)(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1.C. Satellite Relocation.

1.C(1) Once the specific FCC Approvals necessary to relocate the Satellite have been received, EchoStar shall commence relocating the Satellite to the Orbital Location as soon as reasonably practicable [REDACTED] and use commercially reasonable efforts to (a) complete relocation of the Satellite to the Orbital Location as soon as reasonably practicable [REDACTED] (b) complete testing of the Satellite within [REDACTED] and (c) complete the operational plan developed pursuant to Section 5.B to bring into use, for ITU purposes, the 129° W.L. Frequencies. Maintenance of the Satellite at the Orbital Location for the duration of the Service Term is subject to EchoStar's rights under Section 2.D.

1.C(2)

[REDACTED]

1.D. Direction of Operations. Notwithstanding any other provision of this Agreement, the Satellite shall be under the direction or control of Ciel consistent with Section 3(3)(b) of the Radiocommunication Act at all times during which the Satellite is being operated at the Orbital Location pursuant to the 129° W.L. Licence. Subject to the immediately preceding sentence, EchoStar shall perform TT&C functions for the Satellite. EchoStar and Ciel agree that the use and operations of the Satellite shall at all times be subject to the authority of the Canadian government, and comply with applicable Canadian and United States laws and regulations, including without limitation the right of the Canadian government to assume and retain possession of any radio station pursuant to Section 7 of the Radiocommunication Act. In the event that the Canadian government takes possession of the Satellite pursuant to Section 7 of the Radiocommunication Act,

[REDACTED]

[REDACTED]

[REDACTED]

1.E. Term. The term for the Service provided under this Agreement (the "Service Term") shall commence on the In-Service Date for the Satellite at the Orbital Location (the "Commencement Date"). Unless earlier terminated by either party in accordance with the terms and conditions of this Agreement, the Service Term and this Agreement shall expire, except as otherwise provided herein or as the parties may otherwise agree, on the earliest of:

[REDACTED]

1.F. Notices. All notices regarding technical or operational matters requiring immediate attention will be given by telephone to the telephone numbers set forth below and shall be followed by written notification. 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 to be given to EchoStar:

[REDACTED]

EchoStar's 24-Hour Emergency Telephone # for Technical/Operational Issues:

[REDACTED]

[REDACTED]

[REDACTED]

If to be given to Ciel:

[REDACTED]

[REDACTED]

[REDACTED]

Ciel's 24-Hour Emergency Telephone # for Technical/Operational Issues:

[REDACTED]

ARTICLE 2. SPECIFIC TERMS

2.A. Right to Use. Subject to and in accordance with the terms and conditions stated herein, EchoStar shall have the exclusive right to use all of the capacity of the Satellite (the "Service") at the Orbital Location for the Service Term of this Agreement. Subject to Ciel's rights under the first sentence of Section 1.D, EchoStar shall be responsible for the provision, installation, operation and maintenance of all earth station facilities and equipment for transmitting signals to, and receiving signals from, the Satellite.

2.B. Taking the Satellite Out of Commercial Operation. [REDACTED]

2.C. Conditions of Licence. EchoStar and Ciel have accepted the application of the conditions for the 129° W.L. Licence issued by Industry Canada as part of the AIP (the "Conditions of Licence") (such AIP appended to this Agreement as Attachment A).

2.D. [REDACTED]

2.D(1) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.D(2)

[REDACTED]

2.E Health Reports. Appended to this Agreement as Attachment B is a summary health report for the Satellite. As soon as reasonably practicable following the end of each calendar quarter during the Service Term, EchoStar will provide a summary health report to Ciel in a substantially similar form as Attachment B. Ciel is authorized by EchoStar to provide copies of such health reports to cognizant Governmental Entities to the extent required under applicable law. Both Attachment B and the summary health reports to be provided during the Service Term are subject to appropriate redactions in order to comply with ITAR and other applicable laws. Upon request of Ciel, EchoStar agrees to provide an unredacted version to a "U.S. person" (as such term is defined in ITAR) designated by Ciel and acceptable to EchoStar.

ARTICLE 3. PAYMENT

3.A. Monthly Recurring Service Charge. Beginning on the Commencement Date and for the duration of the Service Term, EchoStar will pay to Ciel for the Service a monthly recurring service charge ("MRC") of

[REDACTED]

3.B. Billing and Payment. Invoices will be issued monthly

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3.C. Taxes and Other Charges.

[REDACTED]

ARTICLE 4. SERVICE RESPONSIBILITIES

4.A. Laws and Regulations Governing the Service. Location and operation of the Satellite and EchoStar's and Ciel's performance of all obligations pursuant to this Agreement are subject to all applicable laws and regulations of both Canada and the United States, including without limitation the ITAR, the Radiocommunication Act, the *Telecommunications Act* (Canada), as amended, the Communications Act, and all applicable policies, decisions, orders, rules and regulations of Industry Canada, the Canadian Radio-television and Telecommunications Commission and the FCC; provided that it is understood that location and operation of the Satellite at the Orbital Location shall be subject to the licensing jurisdiction of Canada and that the United States shall not have responsibility for the Satellite during its location and operation at the Orbital Location.

4.B. Use Conditions.

4.B(1) EchoStar will use the Service in accordance with all applicable laws and regulations. EchoStar will not use the Service for any unlawful purpose, including violation of laws governing the content of material transmitted using the Service.

[REDACTED]

4.B(2)

[REDACTED]

ARTICLE 5. OPERATIONAL MATTERS

5.A. Service Access. EchoStar is responsible for providing, operating and maintaining the equipment necessary to access the Satellite and the Service. EchoStar at its expense shall provide Ciel with any descrambling or decoding devices that may be required for signal monitoring.

[REDACTED]

[REDACTED]

5.B. Use of Frequencies.

[REDACTED]

5.C

[REDACTED]

ARTICLE 6. INDEMNIFICATION

[REDACTED]

ARTICLE 7. REPRESENTATIONS, WARRANTIES AND COVENANTS; WARRANTY DISCLAIMER; LIMITATION OF LIABILITY

7.A. Ciel's Representations, Warranties and Covenants. Ciel hereby represents, warrants and covenants to EchoStar as follows:

7.A(1)

[REDACTED]

7.A(2)

[REDACTED]

[REDACTED]

[REDACTED]

7.A(3)

[REDACTED]

7.A(4)

[REDACTED]

7.A(5)

[REDACTED]

7.A(6)

[REDACTED]

7.A(7)

[REDACTED]

7.A(8)

[REDACTED]

7.A(9)

[REDACTED]

7.B. EchoStar's Representations, Warranties and Covenants. EchoStar hereby represents, warrants and covenants to Ciel as follows:

7.B(1)

[REDACTED]

7.B(2)

[REDACTED]

7.B(3)

[REDACTED]

7.B(4)

[REDACTED]

[REDACTED]

[REDACTED]

7.B(5) [REDACTED]

7.B(6) [REDACTED]

7.C. Warranty Disclaimer.

7.C(1) [REDACTED]

7.C(2) [REDACTED]

7.D. Limitation of Liability.

7.D(1) [REDACTED]

7.D(2) [REDACTED]

7.D(3) [REDACTED]

7.E Survival. The provisions of this Article 7 shall survive expiration or termination of this Agreement indefinitely.

ARTICLE 8. CONFIDENTIALITY AND NONDISCLOSURE

8.A. Certain Information Regarding the Service. Except for disclosures required by a court or Governmental Entity or to assignees permitted under Section 10.I, each party hereby agrees not to disclose to third parties (without the prior written consent of the other party) the material terms and conditions of this Agreement (including but not limited to the prices, payment terms, schedules, protection arrangements, and restoration provisions thereof) and all information provided to Ciel related to the design and performance characteristics of the Satellite, and any subsystems or components thereof.

8.B. Proprietary Information.

8.B(1) To the extent that either party discloses to the other any other information which it considers proprietary or is proprietary information of a third party, in written or tangible form, said party shall identify such information as proprietary when disclosing it to the other party by marking it clearly and conspicuously as proprietary information. Any proprietary disclosure to either party, if made orally, shall be identified as proprietary information at the time of disclosure, if the disclosing party wishes to keep such information proprietary under this Agreement. Any such information disclosed under this Agreement shall be used by the recipient thereof only in its performance under this Agreement.

8.B(2) Neither party shall be liable for the inadvertent or accidental disclosure of such information marked as proprietary, if such disclosure occurs despite the exercising of the same degree of care as the receiving party normally takes to preserve and safeguard its own proprietary information (but not less than reasonable care) or if such information (a) is or becomes lawfully available to the public from a source other than the receiving party before or during the period of this Agreement, (b) is released in writing by the disclosing party without restrictions, (c) is lawfully obtained by the receiving party from a third party or parties without obligation of confidentiality, (d) is lawfully known by the receiving party prior to such disclosure, or (e) is at any time lawfully developed by the receiving party completely independently of any such disclosure or disclosures from the disclosing party.

8.B(3) In addition, neither party shall be liable for the disclosure of any proprietary information which it receives under this Agreement pursuant to judicial action or decree, or pursuant to any requirement of any Government or any agency or department thereof, having jurisdiction over such party, provided that in the reasonable opinion of counsel for such party such disclosure is required, and provided further that such party to the extent reasonably practical shall have given the other party notice prior to such disclosure.

8.C. Survival. The provisions of this Article 8 are in addition to, and not in lieu of, any agreements of the parties regarding confidentiality executed by the parties on or before the date hereof and shall survive expiration or termination of this Agreement indefinitely.

ARTICLE 9. TERMINATION

9.A. Termination. In addition to any rights of termination provided in other Articles of this Agreement, either party may terminate this Agreement (a "Termination for Default") by giving the other party written notice thereof in the event:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.B. Refunds.

[REDACTED]

9.C. Termination Liability.

[REDACTED]

9.D Termination for Convenience.

[REDACTED]

9.E Relocation of Satellite upon Expiration or Termination. Upon expiration or termination of this Agreement, EchoStar shall have discretion to relocate the Satellite to another BSS orbital location, subject to the prior approval of the Governmental Entity to which that orbital location is allotted by the ITU.

ARTICLE 10. GENERAL PROVISIONS

10A. Force Majeure. If a Force Majeure Event under this Agreement has occurred and is continuing, then the performance obligations of the party directly affected by such Force Majeure Event under this Agreement shall be suspended for the duration of such Force Majeure Event and such party shall not be

[REDACTED]

[REDACTED]

liable to the other by reason of any delay or failure in performance of this Agreement which arises out of such Force Majeure Event; provided that the party directly affected by such Force Majeure Event shall promptly take and continue to take all reasonable actions to abate such Force Majeure Event as soon as possible. If a payment is made late as a result of a Force Majeure Event (e.g., unscheduled closure of the banking settlement system), then interest at 30-day LIBOR shall be paid from the due date until the date actually paid. If the Service on all transponders on the Satellite is unavailable as a result of a Force Majeure Event affecting the Satellite, then EchoStar's obligation to pay the MRC shall be suspended during such period that the Service is unavailable and shall resume upon the Service becoming available.

10.B. No Implied Licence. The provision of services or the conveying of any information under this Agreement shall not convey any licence by implication, estoppel or otherwise, under any patents or other intellectual property rights of Ciel or EchoStar, and their Affiliates, contractors and vendors.

10.C. No Third Party Rights; No Fiduciary Relationship. Nothing contained in this Agreement shall be deemed or construed by the parties or by any third party to create any rights, obligations or interests in third parties, or to create the relationship of principal and agent, partnership or joint venture or any other fiduciary relationship or association between the parties.

10.D. No Waiver; Remedies Cumulative. No waiver, alteration, or modification of any of the terms of this Agreement will be binding unless in writing and signed by both parties. All remedies and rights hereunder and those available in law or in equity shall be cumulative, and the exercise by a party of any such right or remedy shall not preclude the exercise of any other right or remedy available under this Agreement in law or in equity.

10.E. Costs and Legal Fees.

10.F. Governing Law and Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without giving effect to conflict of law principles. Any controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be determined by binding arbitration administered by the American Arbitration Association in accordance with its then-current International Arbitration Rules and Supplementary Procedures for Large, Complex Disputes, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The number of arbitrators shall be three (3). Within fifteen (15) days after the commencement of arbitration, each party shall select one (1) person to act as an arbitrator and the two (2) selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon a third arbitrator within twenty (20) days after the commencement of the arbitration, the third arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be New York City, New York USA. The language of the arbitration shall be English. The arbitrators shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages. In furtherance and without limitation of the foregoing, the arbitrators shall not award consequential damages in any arbitration initiated under this Section 10.F. The arbitrators shall award to the prevailing party, in addition to any other money damages awarded, its reasonable costs, including reasonable attorneys' fees, in successfully bringing or defending against such arbitration. The award of the arbitrators shall be in writing, shall be signed by a majority of the arbitrators, and shall be accompanied by a reasoned opinion, including findings of fact, the reasons for the disposition of each

claim, and a breakdown of any monetary award as to specific claims (if applicable). Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding the foregoing, the request by either party for equitable relief, including without limitation preliminary or permanent injunctive relief, shall not be subject to arbitration under this Section 10.F, and may be adjudicated before any court of competent jurisdiction. The provisions of this Section 10.F shall survive expiration or termination of this Agreement indefinitely.

10.G. Specific Performance. Each party recognizes that any material breach of the terms of this Agreement would give rise to irreparable harm to the other party for which money damages would not be an adequate remedy, and accordingly agrees that, any term of this Agreement to the contrary notwithstanding, in addition to all other remedies available to it, each party shall be entitled to enforce the terms of this Agreement by a decree of specific performance against the other party, in each case without the necessity of proving the inadequacy of money damages, provided that EchoStar shall not be entitled to receive such specific performance with respect to any action that would: (1) pose or allow to remain a threat to the health and stable operation of the Satellite; or (2) result in a violation by Ciel of any applicable law or regulation, or any coordination agreement or requirement. Such remedy shall not be deemed the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies that a party may have at law, in equity, under contract or otherwise.

10.H. Headings; Severability; EchoStar Purchase Orders. All titles and headings in this Agreement are for reference purposes only and will not affect the meaning or construction of the terms of this Agreement. If any part or parts of this Agreement are held to be invalid, the remaining parts of this Agreement will continue to be valid and enforceable. EchoStar agrees that any purchase order or other similar document that EchoStar may issue in connection with this Agreement will be for EchoStar's internal purposes only and, therefore, even if acknowledged by Ciel, will not in any way add to, subtract from, or in any way modify the terms and conditions of this Agreement.

10.I. Assignment and Other Third Party Use.

10.I(1) EchoStar shall, without Ciel's prior consent, have the right to assign or transfer (which, for clarification purposes, shall include the right to sublease) its rights or obligations in whole or in part under this Agreement (a) to any Affiliate or third party, or (b) in connection with an assignment or grant of a security interest in this Agreement as part of a financing transaction of EchoStar, provided that (i) EchoStar remains obligated for performance of all obligations of "EchoStar" under this Agreement, (ii) such Affiliate or third party agrees to be bound by the terms of this Agreement, and (iii) EchoStar shall obtain Ciel's prior written consent, which consent may be withheld in its sole discretion, to any proposed assignment or transfer under clause (a) of this Subsection 10.I(1) to (x) a competitor of Ciel that is not an Affiliate of EchoStar, or (y) an entity that is not an Affiliate of EchoStar with whom Ciel, acting reasonably and in accordance with its business practices, would choose not to do business. Notwithstanding the foregoing, (A) EchoStar shall be permitted to assign this Agreement to an Affiliate of EchoStar that owns all or substantially all of the revenue-generating activities conducted by EchoStar as of the date hereof, in which case EchoStar shall no longer be obligated for performance of any obligations of "EchoStar" under this Agreement, and (B) EchoStar may assign or transfer its rights or obligations in whole under this Agreement to an Affiliate or a third party whose financial condition, in Ciel's reasonable opinion (to be obtained prior to such assignment or transfer), is equal to or better than EchoStar's financial condition at the time of transfer, in which case EchoStar shall not remain obligated for performance of any obligations of "EchoStar" under this Agreement.

10.I(2) Ciel shall, without EchoStar's prior consent, have the right to assign or transfer its rights or obligations in whole or in part under this Agreement to any Affiliate or third party, provided that (a)

Ciel remains obligated for performance of all obligations of "Ciel" under this Agreement, (b) such Affiliate or third party agrees to be bound by the terms of this Agreement, and (c) Ciel shall obtain EchoStar's prior written consent, which consent may be withheld in its sole discretion, to any proposed assignment or transfer to (i) a competitor of EchoStar that is not an Affiliate of Ciel, or (ii) an entity that is not an Affiliate of Ciel with whom EchoStar, acting reasonably and in accordance with its business practices, would choose not to do business.

10.I(3) The provisions hereof shall be binding on and inure to the benefit of the parties, their successors and permitted assigns. The provisions hereof shall not apply to transactions with subscribers or other end users in their capacity as such.

10.J. Publicity. Neither party shall in any way or in any form publicize or advertise in any manner this Agreement or the Service to be provided pursuant to this Agreement without the express written approval (which shall not be unreasonably withheld) of the other party, obtained in advance, for each item of advertising or publicity. The foregoing prohibition shall include but not be limited to news releases, letters, correspondence, literature, promotional materials or displays of any nature or form. Each request for approval hereunder shall be submitted in writing to the representative designated in writing; and approval, in each instance, shall be effective only if in writing and signed by said representative. Nothing herein shall prevent either party from providing Industry Canada or the FCC, or any other governmental agency, information concerning this Agreement as required by law or in response to a request for information by such governmental agency. Notwithstanding the foregoing, either party may refer to the fact that Ciel is providing the Service to EchoStar without the other party's prior approval so long as such statements are limited to a statement of such fact and are not an endorsement (positive or negative) of any product or service.

10.K. ITAR. Information exchanged under this Agreement may be subject to United States export control laws and regulations, such as the ITAR or the Export Administration Act. The parties agree that information subject to the export control laws and regulations shall not be disclosed or transferred to a third party without first obtaining written approval from the disclosing party and complying with all applicable United States export control laws and regulations.

10.L. Entire Agreement. This Agreement contains the complete and exclusive understanding of the parties with respect to the subject matters hereof and, except as expressly set forth to the contrary in Section 8.C, supersedes all prior negotiations and agreements between the parties with respect thereto.

[REDACTED]

[REDACTED] To the extent that any Attachment may be inconsistent with the text of this Agreement, the text of this Agreement shall control.

10.M. Currency. All monetary amounts in this Agreement are expressed in United States dollars and shall be paid in United States dollars.

10.N Documents. Subject to compliance with applicable legal requirements of Canada and the United States (*e.g.*, ITAR), 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 purposes of this Agreement.

10.O Survival. Neither party shall have any further obligations or liability to the other under this Agreement in the event of the termination or expiration of this Agreement, except for any obligations or liability (a) arising prior to such termination or expiration, (b) expressly arising upon or as a result of such termination or expiration, (c) expressly described in this Agreement as surviving such expiration or

termination, (d) that logically would be expected to survive termination or expiration, or (e) arising as a result of or in connection with the representations, warranties and covenants in Article 7.

10.P [REDACTED]

ARTICLE 11. DEFINITIONS

As used in this Agreement:

A. "129° W.L. Frequencies" means the thirty-two (32) Ku-Band BSS frequencies at the Orbital Location assigned to Canada by the ITU Region 2 Plan for BSS.

B. "129° W.L. Licence" shall have the meaning specified in Subsection 1.B(1).

C. "Affiliate" means, with respect to a party, any person or entity (1) more than 50% of the capital securities of which on an as-converted basis are owned by, or (2) directly or indirectly controlling, controlled by, or under common control with, such party at the time when the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to a person or entity, shall mean the possession, directly or indirectly, of the power to (x) direct or cause the direction of management policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise, or (y) select a majority of the Board of Directors of such person or entity.

D. "AIP" means the Approval in Principle received from Industry Canada via letter from Jan Skora to Kevin B. Smyth dated 1 February 2005, which letter is appended to this Agreement as Attachment A.

E. "Agreement" means this agreement, including any exhibits and attachments.

F. "Authorization" means any authorization, order, permit, approval, forbearance decision, grant, license, consent, right, franchise, privilege or certificate of any Governmental Entity of competent jurisdiction, whether or not having the force of law.

G. "BSS" means the Broadcasting-Satellite Service, as defined by the Radio Regulations of the ITU.

H. "Ciel" shall have the meaning specified in the preamble paragraph.

I. [REDACTED]

J. "Ciel-2 Satellite" means a new satellite to be constructed by Ciel to provide service at the Orbital Location as contemplated by the Ciel-2 Agreement.

K. "Commencement Date" shall have the meaning specified in Section 1.E.

L. "Communications Act" means the Communications Act of 1934 (United States), as amended.

M. [REDACTED]

[REDACTED]

N. "Conditions of Licence" shall have the meaning specified in Section 2.C.

O. "EchoStar" shall have the meaning specified in the preamble paragraph.

P. [REDACTED]

Q. "EchoStar's Designees" shall have the meaning specified in Subsection 4.B(2).

R. "Effective Date" shall have the meaning specified in the preamble paragraph.

S. "End-of-Life" means the date on which the Satellite should be taken out of service because of insufficient fuel, which for clarification purposes shall include an allowance for sufficient fuel to de-orbit the Satellite.

T. [REDACTED]

[REDACTED]

[REDACTED]

U. "FCC" means the United States Federal Communications Commission and any successor agency thereto.

V. "FCC Approvals" shall have the meaning specified in Subsection 1.B(2).

W. "Force Majeure Event" means acts of God, acts of the other party, acts of government authority, strikes or other labor disturbances, or any other cause beyond the reasonable control of that party, that (i) as to Ciel, relates to or affects its ability to provide the Service, (ii) as to either party, relates to or affects that party's ability to make a payment, or (iii) as to either party, relates to or affects its ability to fulfill its material obligations under this Agreement.

X. "Governmental Entity" means any (i) multinational, federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) subdivision, agent, commission, board, or authority of any of the foregoing, or (iii) quasi-governmental or private body validly exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, in each case in the proper exercise of its governmental authority.

Y. "Gross Negligence" means an action or omission in reckless disregard of (i) the acting or omitting party's duties and obligations under this Agreement, or (ii) the consequences to the interests of the other party under this Agreement.

Z. "In-Service" means that [REDACTED]

AA. "In-Service Date" means the date on which the Satellite is In-Service.

BB. "Industry Canada" means Canada's Department of Industry and any successor agency thereto.

CC. "Intended Purpose" means [REDACTED]

DD. "ITAR" shall mean the United States International Traffic in Arms Regulations.

EE. "ITU" shall mean the International Telecommunication Union.

FF. "ITU Region 2 Plan for BSS" means the ITU Region 2 Plan for BSS and Feeder Link Assignments, as contained in Article 4 of Appendix 30 and Article 4 of Appendix 30A, respectively, of the ITU Radio Regulations (Edition 2004).

GG. [REDACTED]

HH. "MRC" shall have the meaning specified in Section 3.A.

II. "Orbital Location" shall have the meaning specified in Section 1.A.

JJ. "Prime Rate" shall mean the "prime rate" of interest as shown in the Money and Investing Section of the *Wall Street Journal* as of the applicable date.

[REDACTED]

[REDACTED]

- KK. "Radiocommunication Act" means the Radiocommunication Act (R.S. 1985, c. R-2), as amended.
- LL. "Regulatory Provisions" means all applicable requirements of the Communications Act and the published policies, rules, decisions, and regulations of the FCC, in each case as amended from time to time.
- MM. "Satellite" shall have the meaning specified in Section 1.A.
- NN. "Satellite Failure" means a satellite (i) that has suffered a total loss or destruction, (ii) for which none of the payload can be operated for the Intended Purpose, or (iii) that is incapable of bringing the 129° W.L. Frequencies into use (for ITU purposes).
- OO. "Service" shall have the meaning specified in Section 2.A.
- PP. "Service Term" shall have the meaning specified in Section 1.E.
- QQ. "Termination for Default" shall have the meaning specified in Section 9.A.
- RR. "Termination Value" shall have the meaning specified in Section 9.C.
- SS. "TT&C" means telemetry, tracking and control.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this agreement as of the date first set forth above.

ECHOSTAR SATELLITE L.L.C.

CIEL SATELLITE COMMUNICATIONS INC.

By: R. Stanton Dodge
(Signature)

By: _____
(Signature)

Name: R. Stanton Dodge
(Typed or Printed Name)

Name: _____
(Typed or Printed Name)

Title: SVP, Deputy General
Counsel & Asst.
Secretary

Title: _____

- KK. "Radiocommunication Act" means the Radiocommunication Act (R.S. 1985, c. R-2), as amended.
- LL. "Regulatory Provisions" means all applicable requirements of the Communications Act and the published policies, rules, decisions, and regulations of the FCC, in each case as amended from time to time.
- MM. "Satellite" shall have the meaning specified in Section 1.A.
- NN. "Satellite Failure" means a satellite (i) that has suffered a total loss or destruction, (ii) for which none of the payload can be operated for the Intended Purpose, or (iii) that is incapable of bringing the 129° W.L. Frequencies into use (for ITU purposes).
- OO. "Service" shall have the meaning specified in Section 2.A.
- PP. "Service Term" shall have the meaning specified in Section 1.E.
- QQ. "Termination for Default" shall have the meaning specified in Section 9.A.
- RR. "Termination Value" shall have the meaning specified in Section 9.C.
- SS. "TT&C" means telemetry, tracking and control.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this agreement as of the date first set forth above.

ECHOSTAR SATELLITE L.L.C.

CIEL SATELLITE COMMUNICATIONS INC.

By: _____
(Signature)

By: 
(Signature)

Name: _____
(Typed or Printed Name)

Name: KEVIN SMYTH
(Typed or Printed Name)

Title: _____

Title: CEO

Attachment A

Approval in Principle



Industry Canada Industrie Canada

300 Slater Street
Ottawa, ON K1A 0G8

Our File: 6215-22

FEF - 1 2005

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

Dear Mr. Smyth:

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

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

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

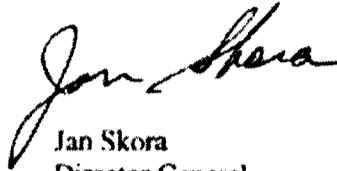
1/2

Canada



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

Yours sincerely,



Jan Skora
Director General
Radiocommunications and
Broadcasting Regulatory Branch

Attachment



Attachment

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

Eligibility

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

Licence Transfer

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

Serving Canadian Broadcasting Needs

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

Milestones

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

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

Capacity to Improve Connectivity

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

International Coordination

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

Industrial Benefits

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

Operational Requirements

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

Reporting

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

Licences and Licence Fees

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

Attachment B

Summary Health Report for EchoStar V

GENERAL

Description

EchoStar V is a Space Systems/Loral model FS1300 spacecraft that was launched 16 September 1999. The spacecraft is currently used as an on-orbit spare and located at the 119° W.L. orbital location.

BUS AND PAYLOAD ANOMALIES

Solar Array String Failures

EchoStar V is equipped with a total of 96 solar array strings, 92 of which are required to assure full power availability for the 12-year design life of the satellite. To date, EchoStar V has suffered failures to 5 solar array strings, reducing solar array power to approximately 95% of its original capacity. While currently capable of operating 32 transponders, as designed, the solar array anomalies may prevent the use of some of those transponders for the full 12-year design life of the satellite.

Momentum Wheels

Two momentum wheel anomalies previously experienced require operation of the spacecraft in a modified earth-pointing mode utilizing thrusters to maintain spacecraft pointing. While this operating mode provides adequate earth-pointing performance, it results in both an increase in fuel usage (with corresponding reduction of spacecraft life), and continuous operations of the digital integrated rate assemblies (DIRAs). Current total DIRA on-times exceed those recommended by the spacecraft manufacturer.

Transponder Failures

EchoStar V is equipped with 48 traveling wave tube amplifiers (TWTAs), 16 of which are used as spares. To date, EchoStar V has had 3 TWTAs fail. All failed TWTAs can be replaced with a spare TWTAs.

DCU (Data Concentrator Unit) Multiplexer Chip Failures

EchoStar V has experienced anomalies in a spacecraft electronic component which affects the ability to receive telemetry from certain on-board equipment. Other methods of communication have been established to alleviate the effects of the failed component.

Thruster 5A Performance Issue

EchoStar V experienced a suspected blockage in thruster 5A, which reduced the performance of this thruster. Thruster 5B is currently being used in place of thruster 5A.

REMAINING MISSION LIFE AND POST-MISSION DISPOSAL

Mission Life

Due to the previously identified momentum wheel failures, EchoStar V is currently using thrusters to maintain earth-pointing in a "storage mode" at the 119° W.L. orbital location. Analysis based on propellant bookkeeping indicates a remaining mission life of 5.9 years (as of 22 December 2004) in "storage mode" at this location. When EchoStar V is transitioned to a mode supporting broadcast operations at the 129° W.L. orbital location (assuming the satellite is on-station in June 2005), the estimated mission life is reduced due to tighter earth pointing requirements, but remains at approximately 3.5 years or approximately through December 2008.

Post-Mission Disposal

The planned end-of-life maneuvers consist of thruster firings to achieve a 300 km increase in mean orbit altitude. The propellant required for the planned maneuvers has been included in all mission life estimates.