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Via HAND DELIVERY

Federal Communications Commission
Office of Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20036

Re: **EchoStar Satellite L.L.C. Application for Special Temporary Authority To
Conduct Telemetry, Tracking and Command Operations During the Relocation
of EchoStar 4 to 77° W.L. (File No. SAT-STA-20050321-00068)**

Dear Ms. Dortch,

EchoStar Satellite L.L.C. ("EchoStar") hereby responds to the May 4, 2005 letter from William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC ("DIRECTV") to Thomas S. Tycz, Chief, Satellite Division, FCC ("*DIRECTV Letter*").

The issues raised by DIRECTV are unripe and unsuitable for evaluation in the context of reviewing this application, which is an STA request simply to conduct TT&C operations during the relocation of EchoStar 4 to 77° W.L. As DIRECTV itself recognizes,¹ the above-captioned application does not include a request by EchoStar for authority to provide service to the United States from EchoStar 4 at 77° W.L. Instead, EchoStar 4 will be brought into use at the 77° W.L. orbital location to enable QuetzSat, S. De R.L. de C.V. ("QuetzSat") to serve Mexico and to comply with the conditions of QuetzSat's Mexican BSS concession. Compliance with the conditions of QuetzSat's concession is important to preserve the possibility of service to the United States from the 77° W.L. slot in the future. Because EchoStar is not requesting such authority today, however, the only issue relating to the 72.5° W.L. and 77° W.L. slots is whether Mexico and Canada have successfully coordinated the relevant

¹ *DIRECTV Letter* at 2.

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modification filings for their respective orbital locations. That question too is one of ITU process that is irrelevant to this proceeding but, in any event, the answer is yes.

In that regard, the *DIRECTV Letter* is inconsistent with DIRECTV's stated position that nothing remains to be done to coordinate the existing Canadian and Mexican filings at 72.5° W.L. and 77° W.L. respectively.² DIRECTV has previously asserted:

Under ITU rules, an administration affected by a proposed modification to the BSS plan has four months following the date of publication in which to comment on the proposal, with failure to comment being understood as agreement to the proposed modification. Both Mexico and Canada were affected by the other administration's proposed modification, yet neither commented on the other's filing within the allotted four-month period. Accordingly, at this point, neither Mexico nor Canada has standing to claim protection against operations in conformance with the parameters submitted by the other administration.³

Indeed, EchoStar understands that the 1996 Mexican modification to the Plan at 77° W.L. has in fact been coordinated fully with the Canadian ITU modification at 72.5° W.L.⁴ There is therefore no room for any objection to the use of the 77° W.L. slot consistent with Mexico's 1996 ITU filing from any Canadian licensee -- nor from DIRECTV, which is not even the Canadian licensee for 72.5° W.L.

DIRECTV's request for technical information regarding EchoStar 4 is also inconsistent with its own request for authority to move its DIRECTV 3 satellite to 82° W.L. This was a request similar to the instant application, since DIRECTV was not seeking authority to serve the United States

² DIRECTV made this argument in response to the question raised by EchoStar as to "whether the Mexican 77° W.L. slot will remain available for service to the U.S." if the Commission were to authorize DIRECTV's use of the Canadian slot at 72.5° W.L. See Reply Comments of EchoStar Satellite L.L.C. at 4, filed in SAT-STA-20040107-00002 (filed Mar. 10, 2004).

³ See Letter from William M. Wiltshire, Counsel for DIRECTV to Thomas Tycz, Chief, Satellite Division, FCC, at 1-2, filed in SAT-STA-20040107-00002 (filed May 24, 2004).

⁴ Specifically, notwithstanding DIRECTV's assertion to the contrary, see *DIRECTV Letter* at 2 n.6, EchoStar has been informed by QuetzSat that the Mexican modification at 77° W.L. (filed with the ITU in 1996) and the Canadian modifications at 72.5° and 82° W.L. (also filed with the ITU in 1996) have been coordinated between their respective administrations. While subsequent filings may not have been coordinated, this is irrelevant because the EchoStar 4 satellite's EIRP levels will be within the parameters of the 1996 modification for all Canadian and U.S. points.

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from that location. In support of the 82° W.L. application, DIRECTV did not submit any of the technical information that it asks EchoStar to provide here.⁵

EchoStar 4 will operate at 77° W.L. in full conformity with the 1996 Mexican ITU modification over all points in Canada and the United States. The attached map of the EIRP contours for the proposed operations of the EchoStar 4 satellite at the 77° W.L. orbital location demonstrates that the operation of EchoStar 4 at that location will be below or at the EIRP envelope of the 1996 Mexican ITU modification over the United States and Canada. (See Attachment A.) This means that EchoStar 4 will conform to that modification throughout the 72.5° W.L. service area. Outside of the United States and outside the 72.5° W.L. service area, EchoStar 4 may operate above the ITU modification over a limited number of points -- a small area near Mexico City, over a small part of the Caribbean Sea, in the Pacific Ocean, and in some Central American countries. The EchoStar 4 operation in these areas will be on a non-interference basis at this time.

While service to the United States is not at issue in this proceeding, EchoStar notes that it would be inappropriate for a Canadian orbital slot to be used to delay service to the United States from a Mexican slot. The United States has entered into a direct-to-home protocol with Mexico that allows reciprocal service from the orbital locations of the one country to the consumers of the other without need for any case-by-case application of the "ECO-Sat" standard,⁶ but has no comparable agreement with Canada. But as previously indicated, the question of coordination of operations involving service to the United States from the two slots does *not* arise in this proceeding.

Accordingly, DIRECTV's requests for technical information and additional time to review such information should be dismissed because of the irrelevance of such technical information to the instant limited request for special temporary authority. As discussed above, this irrelevance is demonstrated by, among other things, the fact that the Commission approved the DIRECTV 3 satellite's move to 82° W.L. without requesting similar information.⁷

⁵ While DIRECTV attempts to distinguish its request on the ground that it "involved proposed operations at orbital positions that were at least 10° away from any BSS slot serving the U.S.," see *DIRECTV Letter* at 3, this distinction is unavailing. EchoStar has pending before the Commission an application to use the 86.5° W.L. orbital location for service to the United States, and that application was pending at the time DIRECTV's request was filed. See *EchoStar Satellite L.L.C., SAT-LOA-20030609-00113* (filed Jun. 6, 2003); *DIRECTV, Inc., SAT-STA-20030903-00300* (filed Sept. 3, 2003).

⁶ See Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provision of Direct-to-Home Satellite Services In the United States of America and United Mexican States (Nov. 8, 1996).

⁷ See *DIRECTV Inc.*, 19 FCC Rcd. 11055 (Int'l Bur. 2004).

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

Respectfully submitted,

Pantelis Michalopoulos / DCU.

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Counsel for EchoStar Satellite L.L.C.

Cc:

Thomas Tycz, Chief, Satellite Division, International Bureau
Karl Kensinger, International Bureau
Jay Whaley, International Bureau

William M. Wiltshire, *Counsel for DIRECTV Enterprises, LLC*

Attachment A

EchoStar 4 EIRP contours at 77° W.L.

