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September 30, 2008

BY HAND DELIVERY

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

FILED/ACCEPTED

SEP 30 2008

Federal Communications Commission
Office of the Secretary

**Re: EchoStar Satellite Operating L.L.C.
File No. SES-MFS-20080926-01242**

REQUEST FOR CONFIDENTIAL TREATMENT

Dear Ms. Dortch:

EchoStar Satellite Operating L.L.C. (“DISH Network”), pursuant to the provisions of Sections 0.457 and 0.459 of the Commission’s Rules governing submission of confidential materials,¹ respectfully requests that the unredacted Satellite Services Agreement for Ciel 2 (Aug. 19, 2005), and Amendment #1 to that agreement (Mar. 9, 2006), (together, the “Ciel 2 Agreement”) be afforded confidential treatment and not be placed in the Commission’s public files of the above-referenced applications. DISH Network 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.²

The redacted portions of the Ciel 2 Agreement address a commercial arrangement that has not yet been completed and future obligations of the parties related to the operation of

¹ 47 C.F.R. §§ 0.457, 0.459.

² Both the public, redacted version, which was filed as Attachment C in File No. SES-MFS-20080926-01242, and the confidential unredacted version of the Agreement are included with this request for confidential treatment.

the Ciel 2 satellite, including price terms and provisions that could reveal the parties' business plans to competitors. 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.³ As an initial matter, most businesses do not publicly reveal their distribution and customer contracts that enable them to provide their service in the market. Thus, many 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 that the redacted information in the Ciel 2 Agreement is the type of information that "would customarily be guarded from competitors" is demonstrated by the confidentiality and nondisclosure provision (Article VIII) of the Ciel 2 Agreement. 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 DISH Network 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 Ciel 2 Agreement.

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

1. The information for which confidential treatment is requested includes information on commercial arrangements that have not yet been completed and future obligations of the parties related to the use and operation of the Ciel 2 satellite. As noted above, DISH Network is filing a redacted version of the Ciel 2 Agreement with its electronic submission, and this request for confidential treatment pertains only to those provisions of the Ciel 2 Agreement that are redacted from the public version.
2. The redacted information is being submitted as part of DISH Network's application to modify its blanket earth station authority to operate 5,000,000 receive-only earth stations with the Ciel 2 satellite at the 129° W.L. orbital location.

³ 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).

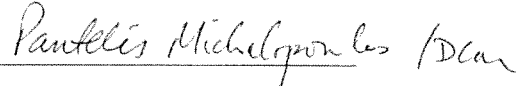
3. The redacted portions of the Ciel 2 Agreement contain sensitive commercial information. Specifically, the redacted information addresses further commercial arrangements that have not yet been completed and future obligations regarding the operation of the Ciel 2 satellite, including price terms and provisions that could reveal DISH Network's and/or Ciel's business plans to competitors. This information is commercial information that has not been made public and is not available to the parties' competitors. DISH Network faces competition from, among others, cable television providers and DIRECTV, a larger digital broadcast satellite provider. These competitors could potentially use the redacted information to gain an advantage in the multichannel video programming distributor market.
4. Disclosure of the redacted information could result in substantial competitive harm to DISH Network and Ciel. The redacted information regarding future operations of Ciel 2 would give the parties' competitors notice of financial and operational terms and plans that have not previously been made public. This would allow these competitors to take steps to counter whatever advantage the parties may gain in the market based on the operations of Ciel 2. In addition, the redacted information regarding commercial arrangements that have not yet been completed could provide the parties' competitors with the ability to negatively impact these commercial arrangements.
5. DISH Network takes significant measures to ensure that this confidential information is not disclosed to the public.
6. The redacted material for which non-disclosure is sought is not available to the public.
7. DISH Network 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 the parties to the Ciel 2 Agreement.
8. Finally, DISH Network 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.⁴ The U.S. Court of Appeals for the

⁴ 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

D.C. Circuit has recognized a “private interest in preserving the confidentiality of information that is provided the Government on a voluntary basis.”⁵ The Commission should extend a similar recognition to the redacted materials.

DISH Network requests that the Commission return the unredacted copy of the Ciel 2 Agreement if its request for confidentiality is denied.⁶ To the extent that the Commission concludes that the disclosure of some or all of the redacted terms should be made available to any parties to this proceeding, DISH Network would be willing to discuss the terms of a Protective Order and provide a somewhat less redacted version of the Memorandum of Agreement for review by outside counsel for those parties.

Respectfully submitted,



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Enclosure

cc: Andrea Kelly – International Bureau

Government’s] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.”).

⁵ *Id.* at 879.

⁶ *See* 47 C.F.R. § 0.459(e).