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Received

APR 16 2004

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**REDACTED -- FOR PUBLIC INSPECTION**

April 5, 2004

Via HAND DELIVERY

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington D.C. 20554

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APR -- 5 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

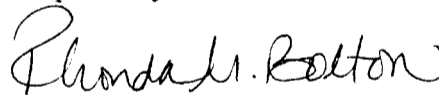
**Re:** *In the Matter of DIRECTV Enterprises, LLC, Request for Special Temporary Authority to Relocate DIRECTV 3 to 82° W.L. and to Conduct Telemetry, Tracking and Command Operations for an Interim Period, File No. SAT-STA-20030903-00300; Order Adopting Protective Order; In the Matter of DIRECTV Enterprises, LLC, Request for Special Temporary Authority to Relocate DIRECTV 5 to 72.5° W.L. and to Conduct Telemetry, Tracking and Command Operations for an Interim Period, File No. SAT-STA-20040107-00002*

Dear Ms. Dortch:

Enclosed for filing in the above-referenced matters are Comments of EchoStar Satellite LLC. In accordance with the Protective Order, DA 04-755, released on March 22, 2004 in File No. SAT-STA-20030903-00300, a copy of this redacted filing is being provided to the Secretary's office for the Commission's public file. The confidential version of the submission is being filed under separate cover.

We also enclose an additional copy of this submission, which we ask you to date-stamp and return with our messenger. If you have questions regarding this filing, please contact me.

Respectfully submitted,



Rhonda M. Bolton  
Counsel for EchoStar Satellite LLC

WASHINGTON

PHOENIX

LOS ANGELES

LONDON

BRUSSELS

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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DIRECTV Enterprises, LLC )  
Request for Special Temporary Authority to )  
Relocate DIRECTV 3 to 82° W.L. and to )  
Conduct Telemetry, Tracking and Command )  
Operations for an Interim Period )  
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Order Adopting Protective Order )  
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File No. SAT-STA-20030903-00300

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Application for Special Temporary Authority to )  
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Operations for an Interim Period )  
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File No. SAT-STA-20040107-00002

To: The International Bureau

**COMMENTS OF ECHOSTAR SATELLITE, LLC WITH RESPECT TO  
INFORMATION FILED PURSUANT TO PROTECTIVE ORDER**

In accordance with the Order Adopting Protective Order issued by the International Bureau ("Bureau") in File No. SAT-STA-20030903-00300, DA 04-755 (rel. Mar. 22, 2004), EchoStar Satellite LLC ("EchoStar") submits these comments concerning the information filed by DIRECTV Enterprises, LLC ("DIRECTV") pursuant to the Protective

Order. This information reinforces EchoStar's view that the issues raised in the above-captioned proceedings are best resolved by rulemaking rather than piecemeal adjudication.

The Bureau directed DIRECTV to make available for inspection by parties to certain proceedings the agreements DIRECTV has reached with Telesat Canada regarding use of DIRECTV satellites at Canadian-licensed orbital slots. These agreements concern the use of DIRECTV 3 at 82° W.L. and DIRECTV 5 at 72.5° W.L. Both satellites are the subject of pending requests by DIRECTV for Special Temporary Authority ("STA") to move the satellites to the orbital slots in question and operate them in those locations.

With respect to the latter STA request, EchoStar has filed comments expressing its view that DIRECTV's proposal to provide Direct Broadcast Satellite ("DBS") service to the United States from the 72.5° W.L. orbital location would most appropriately be considered in the context of a rulemaking to address the overarching policy question of access to the U.S. market via non-U.S. DBS slots.<sup>1</sup> More specifically, EchoStar suggested that the Commission provide some guidance as to the standard for allowing service to the U.S. from a Canadian-licensed DBS satellite. To ensure a level competitive playing field, EchoStar maintained that such standards must be announced and applied uniformly industry-wide; it follows that such standards are most appropriately developed through rulemaking rather than piecemeal adjudication.

EchoStar further observed that there are other pending proposals to serve the U.S. from foreign-licensed DBS satellites at reduced orbital spacings. These proposals raise issues interrelated to those implicated by the 72.5° W.L. STA application, including the role such proposals could play in curing DBS providers' bandwidth deficit, and the potential number and

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<sup>1</sup> See Comments of EchoStar Satellite L.L.C., *In the Matter of DIRECTV Enterprises, LLC, Application for Special Temporary Authority To Relocate DIRECTV 5 to 72.5° W.L. and to Conduct Telemetry, Tracking and Command Operations for an Interim Period*, File No. SAT-STA-20040107-00002 (filed Feb. 17, 2004).

location of reduced-space DBS satellites. DIRECTV has filed a petition requesting that the feasibility of reduced orbital spacing for DBS satellites be addressed in a rulemaking.<sup>2</sup> Should the Commission grant that petition, it should also consolidate the two proceedings.

The agreements associated with DIRECTV's plan to relocate DIRECTV 3 to Canada's 82° W.L. orbital slot reinforce EchoStar's belief that the planned use of Canadian orbital slots should be the subject of a rulemaking. These documents contemplate

. In particular, DIRECTV's December 23, 2003 Memorandum of Agreement ("MOA") with Telesat Canada states that

.<sup>3</sup> While DIRECTV has asserted that DIRECTV 3 will only be used at the Canadian orbital locations to serve Canada,<sup>4</sup> the DIRECTV 3 Satellite Location and Lease Agreement nonetheless contemplates

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<sup>2</sup> See Petition of DIRECTV Enterprises, LLC for a Rulemaking on the Feasibility of Reduced Orbital Spacings in the U.S. Direct Broadcast Satellite Service (filed Sept. 5, 2003).

<sup>3</sup> Memorandum of Agreement Between Telesat Canada and DIRECTV Enterprises, LLC (dated Dec. 23, 2003) ("Telesat MOA"), ¶ A.2.

. See *id.*

<sup>4</sup> See Letter from James H. Barker III, Counsel to DIRECTV, to Marlene H. Dortch, Secretary, FCC (dated Feb. 19, 2004) enclosing unredacted responses to the Bureau's Dec. 8, 2003 list of questions to DIRECTV, response to Question 11.

<sup>5</sup> See Satellite Location and Lease Agreement, ¶ 4.4 ("DIRECTV 3 Lease Agreement") (appended as Exh. B to the Telesat MOA and also to Letter from James H. Barker III, Counsel to DIRECTV, to Marlene H. Dortch, Secretary, FCC (dated Feb. 19, 2004).

EchoStar does not question the legitimacy of such a provision. The point, however, is that this provision does not foreclose

. The Bureau has recognized this. In an inquiry to DIRECTV concerning its request for STA to relocate DIRECTV 3 to 82° W.L., the Bureau questioned DIRECTV's assertion that use of that satellite at 82° W.L. would be limited to Canadian service "particularly in light of the provisions concerning consent to provision in the United States in Paragraph A.2. of the Memorandum of Agreement between Telesat Canada and DIRECTV Enterprises, LLC, dated August 27, 2003."<sup>6</sup>

What does this possibility mean? If the Commission were to authorize DIRECTV to provide service to the U.S. from DIRECTV 5 at 72.5° W.L. and then other requests were received, either from DIRECTV or another entity, to provide service to the U.S. from DIRECTV 3, the Commission would have little choice but to grant that request as well. If the Commission were to do so, and still were to find that Canada does not satisfy the ECO-Sat test, that test would effectively be nullified.<sup>7</sup> EchoStar does not take a position on whether this would be appropriate.

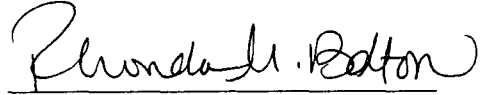
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<sup>6</sup> Letter from Thomas S. Tycz, International Bureau, to James H. Barker III, Counsel to DIRECTV (dated Dec. 8, 2003), Question 11. In response, DIRECTV has characterized this provision as a mere non-compete requirement to prevent Telesat Canada from using DIRECTV's own satellite to provide DBS service to the U.S. in competition with DIRECTV. See Letter from James H. Barker III, Counsel to DIRECTV, to Marlene H. Dortch, Secretary, FCC (dated Feb. 19, 2004) enclosing unredacted responses to the Bureau's Dec. 8, 2003 list of questions to DIRECTV, response to Question 11; see also Consolidated Opposition to Petitions for Reconsideration, Application of General Motors Corp., Hughes Electronics Corp., and The News Corporation Limited for Authority to Transfer Control (dated Mar. 19, 2004), at 10, n.23.

<sup>7</sup> EchoStar notes in that respect that the Commission very recently granted the request of Pegasus Development Corporation to serve the U.S. using earth stations that will communicate with Canadian satellites. See *Pegasus Development Corporation, Consolidated Applications for Authority to Operate One U.S. Transmit/Receive Fixed Earth Station (Call Sign E010320) and 1,000,000 Receive-Only Earth Stations (Call Sign E020022) With The Canadian-Licensed Nimiq*

It is certain, however, that such a result can best be evaluated in a rulemaking, not by piecemeal adjudication.

Respectfully submitted,



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April 5, 2004

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*1 and Nimiq 2 Satellites to Offer Direct Broadcast Satellite Service Throughout the United States, Order, File Nos. SES-LIC-20011121-02186 and SES-LIC-20020111-00075, DA 04-909 (Int'l Bur. rel. Mar. 31, 2004).*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served this 5th day of April 2004 via first-class mail, postage pre-paid (or by hand, indicated by \*) upon:

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