

STEPTOE & JOHNSON LLP  
ATTORNEYS AT LAW

ORIGINAL

Todd Bradley Lantor  
202.429.6482  
tlantor@steptoe.com

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
Tel 202.429.3000  
Fax 202.429.3902  
steptoe.com

July 30, 2004

**VIA HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

Int'l Bureau  
AUG 04 2004  
Front Office

**Re: File No. SES-MOD-20040623-00864; FCC Call Sign E990323**

Dear Ms. Dortch:

EchoStar hereby comments on the above-referenced earth station modification application, filed by PanAmSat Licensee Corporation ("PanAmSat"). PanAmSat seeks authority to add DIRECTV 3 at Canada's 82° W.L. and 91° W.L. orbital locations as points of communication for purposes of feeder link and Telemetry, Tracking and Command communication in the 12.2-12.7 GHz and the 17.3-17.8 GHz bands.<sup>1</sup> PanAmSat's earth station modification request was preceded by an application by DIRECTV for Special Temporary Authority ("STA") to move its DIRECTV 3 satellite to 82° W.L.<sup>2</sup> On June 23, 2004, the International Bureau's Satellite Division granted DIRECTV's

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<sup>1</sup> See File No. SES-MOD-210040623-00864 (FCC Call Sign E990323); *see also* Public Notice, Report No. SES-00619 (rel. June 30, 2004).

<sup>2</sup> *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 (Sept. 3, 2003) ("STA Application"); *see also* Public Notice, Report No. SAT-00168 (rel. Sept. 26, 2003). As explained in the Order granting DIRECTV's STA Application, Telesat Canada and DIRECTV arranged to lease the DIRECTV 3 satellite to Telesat Canada for use at the 82° W.L. and 91° W.L. orbital locations. Telesat reportedly plans, after testing DIRECTV 3 at the 82° W.L. orbital location, to co-locate DIRECTV 3 with Nimiq 1 at 91° W.L.

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application for STA to relocate DIRECTV 3 to the 82° W.L orbital location pursuant to the agreement between DIRECTV and Telesat Canada.<sup>3</sup>

DIRECTV 3 operates (or will operate) at these locations as a Canadian-licensed satellite. In addition, the Direct Broadcast Satellite service, for which PanAmSat requests authority, is not covered under the World Trade Organization Basic Telecommunications Agreement. Therefore, the authorization requested by PanAmSat requires a Commission finding that the “ECO-Sat” test has been satisfied.<sup>4</sup> Indeed, the Commission has not authorized any communications between the DIRECTV 3 satellite and any U.S. earth station, and DIRECTV has stated that “the satellite will be used exclusively for service by Telesat or Telesat’s customers to facilitate service to Canadian BSS subscribers, and will not be used to provide U.S. service from a Canadian orbital position.”<sup>5</sup>

Finally, EchoStar respectfully requests that you associate EchoStar’s pleadings already filed in connection with DIRECTV’s proposals to move its DIRECTV 3 satellite to 82° W.L. and its DIRECTV 5 satellite to 72.5° W.L. with the above-referenced file number.

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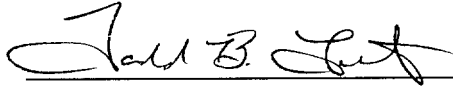
<sup>3</sup> See *Application of DIRECTV, Inc.*, Order, DA 04-1761, File No. SAT-STA-20030903-00300 (rel. June 23, 2004) (Int’l Bur.) (“*DIRECTV 3 Order*”).

<sup>4</sup> See 47 C.F.R. § 25.137 (“Earth station applicants or [other entities] requesting authority to operate with a non-U.S. licensed space station to serve the United States must . . . demonstrat[e] that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in . . . the country in which the non-U.S. licensed space station is licensed . . . .”); *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, et al.*, 12 FCC Rcd. 24094, at ¶ 7 (1997) (“*DISCO II*”) (“Specifically, today we adopt a framework under which we will consider requests for access by non-U.S. licensed satellites into the United States.”); *id.* at ¶ 98. The proposed communication between the earth station in question and the DIRECTV 3 satellite would constitute service to the U.S. for purposes of this standard.

<sup>5</sup> See STA Application at 2.

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Respectfully submitted,



Todd B. Lantor

**Steptoe & Johnson LLP**

1330 Connecticut Avenue, N.W.

Washington, DC 20036-1795

(202) 429-3000

*Counsel for EchoStar Satellite LLC*

cc: Joseph A. Godles, Counsel for PanAmSat Licensee Corporation  
James H. Barker, Counsel for DIRECTV Enterprises, LLC  
William M. Wiltshire, Counsel for DIRECTV Enterprises, LLC