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March 9, 2009

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

Re: **EchoStar-97W Ka-band Authorization**
File Nos. SAT-LOA-20030827-00186, SAT-MOD-20050308-00059; Call Sign S2499;
Withdrawal of Authorization and Request for Waiver

Dear Ms. Dortch,

EchoStar Corporation (“EchoStar”) surrenders its Ka-band authorization for the 97° W.L. orbital location. EchoStar has invested in its Ka-band satellite design and construction and also dedicated resources to the exploration of numerous business plans for the Ka-band spectrum, including but not limited to, direct-to-home video services and high-speed broadband services. Indeed, EchoStar was the first commercial U.S. provider to successfully launch a Ka-band satellite, EchoStar 9. Further, EchoStar has explored partnerships with existing and prospective Ka-band providers to provide service to consumers in an expedited fashion by relocating existing or planned Ka-band satellites to an EchoStar location.

Given the current condition of the capital markets, however, EchoStar has had to prioritize its satellite construction, spectrum resources, and launch vehicles to those projects that would best serve its consumers’ long-term needs and expectations. To that end, the recent commercial availability of non-U.S. BSS spectrum (i.e., Canada and Mexican orbital locations) and the prospect of five 17/24 GHz BSS band slots hold great promise in expanding service to U.S. consumers in the near-term and supplementing that service long-term with high-power video service to single-dish consumer solutions. Thus, despite its investment in the Ka-band license, EchoStar has concluded that this surrender would facilitate its broader efforts to maximize service to U.S. consumers and to utilize available spectrum resources in the most efficient and effective manner.

Consistent with that investment, EchoStar requests that the Commission grant an unconditional release of the performance bond submitted for this authorization¹ and, to the extent required, a waiver in light of the Commission's statement that such bonds "will be payable if the licensee surrenders its license voluntarily before a milestone date."² EchoStar is surrendering its license for good and legitimate cause, i.e., the need to assign priority to more promising satellite resources. The Commission may grant a waiver under Section 1.3 for good cause if the waiver does not "undermine the purposes of the rule, and there [is] a stronger public interest benefit in granting the waiver than in applying the rule."³ None of the relevant rule's three purposes – to deter speculation, bad faith and warehousing – are implicated here. EchoStar has not engaged in speculation or bad faith conduct, and has demonstrated its commitment to building and launching satellites with six operational FSS and DBS satellites. In addition, EchoStar has met all prior milestones under its authorization, and made related payments of millions of dollars under its satellite construction contracts.

Nor has EchoStar warehoused the spectrum at the 97° W.L. orbital location. Indeed, as the Commission has recognized, sufficient spectrum comparable to that authorized for use at 97° W.L. has been available for other potential satellite service providers.⁴ Like Rainbow DBS Company LLC ("Rainbow"), which was recently granted unconditional release of five space station bonds,⁵ EchoStar submitted its original application on the first day the Commission lifted the freeze imposed in its *Amendment of the Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking.⁶ The Commission has already found that since EchoStar filed its original application, there have been at least ten other vacant Ka-band orbital locations for

¹ See Letter from Philip Malet, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC (Apr. 7, 2004) (submitting \$5 million performance bond for the proposed EchoStar-97W satellite); Rider to Bond (dated Sept. 20, 2004) (submitting bond rider to reduce bond amount to \$3 million). See also Letter from Pantelis Michalopoulos, Counsel to EchoStar to Marlene H. Dortch, Secretary, FCC (July 13, 2005) (reducing bond amount to \$2.25 million following contract execution milestone); Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC (June 8, 2006) (reducing bond amount to \$1.5 million following the Critical Design Review milestone).

² *Amendment of Commission's Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, at ¶ 171 (2003).

³ *Rainbow DBS Company LLC; Consent to Withdraw and Unconditionally Release Bonds and Request for Waiver of the Bond Requirement*, Memorandum Opinion and Order, 22 FCC Rcd 4272, 4274-75, ¶7 (2007) ("Rainbow Order").

⁴ *Id.* at 4276, ¶11.

⁵ *Id.*

⁶ 18 FCC Rcd 10760 (2003).

