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September 2, 2009

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

Re: **EchoStar-113° W.L. Ka-band Authorization**
File Nos. SAT-MOD-20070323-00055; SAT-LOA-20040803-00154; Call Sign S2636;
Withdrawal of Authorization and Request for Waiver

Dear Ms. Dortch,

EchoStar Corporation (“EchoStar”) surrenders its Ka-band authorization for the 113° W.L. orbital location. EchoStar has taken good faith efforts to commercialize this orbital location, but has made the business decision to surrender the authority despite good faith multi-player and multi-year efforts and investments to bring into commercial use this orbital location.

Specifically, EchoStar has explored a number of alternatives for utilizing the 113° W.L. orbital location to augment EchoStar’s sister company’s video subscription service. EchoStar has also examined providing satellite broadband services from 113° W.L. directly or through a partner satellite provider. The most recent efforts have centered on the government’s national broadband efforts. As part of the government’s broadband stimulus funding, EchoStar has submitted applications seeking federal support to bring affordable broadband services to unserved and underserved communities. The use of the 113° W.L. orbital location was contemplated as part of those stimulus efforts both independently as well as with prospective satellite partners. EchoStar has now decided that other orbital resources are better situated for EchoStar’s stimulus projects, prompting this decision to surrender the 113° W.L. authorization upon completion of that application process. The surrender will also allow the company to, among other things, focus its efforts on more expedited construction of satellites at other orbital

locations, including recently granted 17/24 GHz BSS satellites,¹ and efforts to meet the government's national broadband deployment efforts.

Importantly, this surrender is not evidence of a lack of interest in the Ka-band going forward. To the contrary, EchoStar was the first commercial U.S. provider to successfully launch a Ka-band satellite, EchoStar 9, and remains interested in the long-term utilization of the Ka-band.

This Surrender Should Not Be Treated as a Missed Milestone. EchoStar requests that this surrender not count as a "missed" milestone for purposes of the presumption of 47 C.F.R. § 25.159(d). EchoStar is surrendering its authorization in a timely manner, well in advance of the relevant launch milestone, October 8, 2009. The timing of this surrender is based on exhaustion of good faith efforts to commercialize this orbital resource and a corresponding business decision that other orbital locations and assets are better situated to meet both short- and long-term core objectives of expanding wholesale video capacity and related satellite services. This surrender, therefore, should not count towards the § 25.159(d) presumption, nor should it affect consideration of EchoStar's request to rebut or waive the presumption with respect to pending applications to supplement existing Fixed Satellite Service capacity at 85° W.L.²

EchoStar Requests The Release of its Performance Bond. EchoStar requests that the Commission grant a release of the performance bond submitted for this authorization³ 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."⁴ EchoStar is surrendering its license for good and

¹ See EchoStar Satellite Corporation, File No. SAT-LOA-20020328-00052, SAT-AMD-20080213-00043, SAT-AMD-20051118-00245, SAT-AMD-20080114-00020 (granted July 28, 2009); EchoStar Satellite Corporation, SAT-LOA-00051, SAT-AMD-20080114-00019, SAT-AMD-20080213-00042, SAT-AMD-20051118-00246 (granted July 28, 2009).

² See File No. SAT-LOA-20090528-00060.

³ See Letter from Pantelis Michalopoulos, Counsel to EchoStar, to Marlene H. Dortch, Secretary, FCC (Oct. 29, 2004) (submitting \$3 million performance bond for the proposed EchoStar-113° W.L. satellite); Rider to Bond (dated Mar. 30, 2006) (submitting bond rider to reduce bond amount to \$2.25 million because EchoStar met the Contract Execution milestone); Rider to Bond (dated Dec. 15, 2006) (submitting bond rider to reduce bond amount to \$1.5 million because EchoStar met the Construction Design Review milestone); Rider to Bond (dated Jan. 2, 2008) (substituting EchoStar Holding Corporation for EchoStar Satellite L.L.C. as the named principal on the performance bond); Rider to Bond (dated Jan. 25, 2008) (substituting EchoStar Corporation for EchoStar Holding Corporation as the named principal on the performance bond); Rider to Bond (dated May 16, 2008) (bond rider to reduce amount to \$750,000 because EchoStar met the Commence Physical Construction milestone).

⁴ *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).

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.”⁵ None of the relevant rules’ three purposes -- to deter speculation, bad faith and warehousing -- is implicated here. EchoStar has not engaged in speculation or bad faith conduct. Nor has EchoStar warehoused the spectrum at the 113° W.L. orbital location. The Commission has recognized that sufficient spectrum comparable to that authorized for use at these slots has been available for other potential satellite service providers.⁶ Specifically, the Commission has found that, since 2003, there have been at least ten other vacant Ka-band orbital locations for which U.S. satellite service providers could have applied.⁷ Rainbow DBS Company’s surrender of five additional Ka-band authorizations in 2006 created additional Ka-band capacity available for licensing. The Commission’s first-come, first-served application procedures have ensured and will continue to ensure that potential applicants will be able to obtain any of the available Ka-band spectrum, including that surrendered by EchoStar in a short period of time. Further, as noted above, the surrender of the 113° W.L. authorization will allow the company to expedite other satellite construction projects, including recently granted 17/24 GHz BSS satellites, and target efforts to meet the government’s national broadband deployment efforts. The release of EchoStar’s performance bond would also be consistent with Commission precedent as Rainbow DBS Company LLC’s performance bonds were returned just two years ago when it made a business decision to redirect its future investments.⁸

Please contact the undersigned if you have any questions regarding this letter.

Respectfully submitted,

/s/
Pantelis Michalopoulos
Counsel for EchoStar Corporation

cc: Robert Nelson, International Bureau

⁵ *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, 4275 ¶ 8 (2007) (“Rainbow Order”).

⁶ *Id.* at 4276, ¶11.

⁷ *Id.*

⁸ *Id.*