

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of )
EchoStar Satellite LLC ) File No. SAT-STA-20050203-00018
Request For Special Temporary Authority for ) Call Sign: S2658
the )
EchoStar 5 Satellite )
EchoStar Satellite LLC ) File No. SES-LFS-20050203-00133
Request for Blanket Authority to Operate ) Call Sign: E050029
1,000,000 Earth Stations to receive DBS )
programming from the Canadian BSS orbital )
slot at 129° W.L. )

ORDER AND AUTHORIZATION

Adopted: June 30, 2005

Released: June 30, 2005

By the Deputy Chief, Satellite Division, International Bureau:

I. INTRODUCTION

1. By this Order, we grant EchoStar Satellite LLC’s (“EchoStar”) application for Special Temporary Authority (“STA”) to relocate its EchoStar 5 satellite from current orbital location of 119° W.L. to the 129° W.L. orbital location.1 This request is pursuant to an agreement between EchoStar and Ciel Satellite Communications, Inc. (“Ciel”). We also grant EchoStar’s request for a blanket authorization for 1,000,000 receive only earth stations, which will be used to provide additional “local-into-local,”2 high definition, and other signals to U.S. consumers using the EchoStar 5 satellite.3 The EchoStar 5 satellite will operate at the 129° W.L. orbital location

1 The term “129° W.L. orbital location,” as used in this Order, refers to the nominal orbital position for the relevant Canadian frequency assignment under the International Telecommunication Union (“ITU”) Region 2 Plan for BSS and Feeder Link Assignments, as contained in Appendix 30/30A of the Radio Regulations, and to any specific orbital location within the cluster defined by such assignment.

2 The term “local-into-local,” as used in this Order, refers to provision via satellite retransmission of local television broadcast signals to subscribers who reside in a local television station’s market, which is defined as a Designated Market Area, or “DMA”. See 17 U.S.C. § 122(j)(2)(A).

3 This action is taken pursuant to Section 25.132 of the Commission’s Rules. See 47 C.F.R. § 25.132(j) (requiring receive-only Earth stations that would operate with non-U.S. licensed space stations to request a license). Any Earth (continued....)

pursuant to a Canadian space station authorization issued to Ciel.

## II. BACKGROUND

### A. The Transaction between EchoStar and Ciel

2. The proposed relocation of EchoStar 5 is pursuant to an agreement between EchoStar and Ciel concerning the use of EchoStar 5 at an orbital location assigned to Canada under the ITU Region 2 Plans for the BSS and associated feeder-links.<sup>4</sup> EchoStar agreed to move the EchoStar 5 satellite to the 129° W.L. orbital location, subject to necessary governmental approvals. The agreement provides EchoStar with an exclusive right to use all of the capacity on the EchoStar 5 satellite at the 129° W.L. orbital location until at least September 30, 2008. Under the agreement, EchoStar may, under certain circumstances, move the EchoStar 5 satellite to one of its Commission licensed orbital locations<sup>5</sup>, in the event that EchoStar 5 is needed to replace some or all of the capacity of certain EchoStar satellites due to an anomaly or anomalies in EchoStar's fleet. Additionally, as provided for in the agreement, operations of the EchoStar 5 satellite may continue for a period of time at the 129° W.L. orbital location, under certain circumstances, including the launch failure of a planned follow-on satellite. That satellite is expected to be launched by the end of 2008.

3. The agreement contemplates that, once EchoStar 5 is at the 129° W.L. orbital location, it will be under Ciel's direction and control. Telemetry, tracking, and control functions (TT&C functions) will be performed, under Ciel's direction, using Earth stations located in the United States and licensed to EchoStar for EchoStar 5's entire term of service under the agreement. On February 2, 2005, Industry Canada provided Ciel with an approval in principle to develop and operate a broadcast-satellite space station at the 129° W.L. orbital location.<sup>6</sup>

### B. Procedural History

4. On February 3, 2005, EchoStar filed both its STA request to relocate the EchoStar 5 satellite and its request for a blanket Earth station authorization. On February 4, 2005, EchoStar filed a copy of a preliminary agreement with Ciel and requested that it be withheld from public

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station authorizations required for tracking, telemetry, and command functions in connection with operations of the EchoStar 5 satellite will be addressed separately.

<sup>4</sup> The Plan for the Broadcasting-Satellite Service (BSS) in the Band 12.2-12.7 GHz in Region 2 is contained in Appendix 30 of the ITU Radio Regulations, and the associated Plan for the feeder-links in the frequency band 17.3-17.8 GHz for the broadcasting-satellite service in Region 2 is contained in Appendix 30A of the ITU Radio Regulations.

<sup>5</sup> EchoStar holds licenses to operate satellites pursuant to the U.S. assignments for the 61.5, 110, 119, 148, and 157° W.L. orbital locations under the ITU Region 2 Plan for BSS and Feeder Link Assignments.

<sup>6</sup> EchoStar STA Request at Exhibit 2. Also available at: [http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/vwapj/ciel-e.pdf/\\$FILE/ciel-e.pdf](http://strategis.ic.gc.ca/epic/internet/insmt-gst.nsf/vwapj/ciel-e.pdf/$FILE/ciel-e.pdf).

inspection pursuant to Sections 0.457 and 0.459 of the Commission's rules.<sup>7</sup> The Satellite Division issued a Public Notice of EchoStar's STA request on March 4, 2005.<sup>8</sup> Separately, on April 6, 2005, we issued a Public Notice of EchoStar's request for a blanket Earth station authorization.<sup>9</sup> On April 4, 2005, the Bureau sent a letter to EchoStar requesting a definitive agreement and further technical information concerning the EchoStar 5 STA application.<sup>10</sup>

5. On May 4, 2005, EchoStar submitted a partial response to the Bureau's letter<sup>11</sup> and on May 11, 2005, EchoStar submitted the remainder of its response to the Bureau's letter along with copy of its definitive agreement with Ciel, requesting confidential treatment for certain portions of the agreement.<sup>12</sup> The Bureau made a follow-up request for additional technical information on May 24, 2005.<sup>13</sup> EchoStar responded on May 31, 2005.<sup>14</sup> No parties commented on either the STA or blanket earth station license applications.

### III. DISCUSSION

6. We find that granting the STA and associated blanket earth station authorization is in the public interest. These actions will provide satellite capacity for the provision of additional local-into-local, high definition, and other programming to its subscribers and would further EchoStar's plan to provide its local-into-local programming in each market on a single satellite dish pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA),<sup>15</sup> thereby improving the quality of service to U.S. consumers.<sup>16</sup> We discuss below the basis for this conclusion.

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<sup>7</sup> 47 C.F.R. §§ 0.457, 0.459. See EchoStar Satellite LLC, Request for Blanket Authority to Operate 1,000,000 Earth Stations to receive DBS programming from the Canadian BSS orbital slot at 129° W.L. and to conduct Telemetry, Tracking and Command Operations in order to Relocate EchoStar 5 to this Orbital Location.

<sup>8</sup> Report No. SAT-00275 (released March 4, 2005)

<sup>9</sup> Report No. SES-00701 (released April 6, 2005).

<sup>10</sup> Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, to Pantelis Michalopoulos, Counsel for EchoStar, dated April 4, 2005, regarding File No(s). SAT- SAT-20050203-00018.

<sup>11</sup> Letter from Pantelis Michalopoulos, Counsel for EchoStar to Thomas Tycz, Chief, Satellite Division, dated May 4, 2005, File No. SAT-STA-20050203-00018, submitting a partial response and requesting a one week extension of the Bureau's deadline for responding to its April 4, 2005 letter.

<sup>12</sup> Letter from Pantelis Michalopoulos, Counsel for EchoStar to Thomas Tycz, Chief, Satellite Division, International Bureau, dated May 11, 2005, File No. SAT-STA-20050203-00018.

<sup>13</sup> Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau regarding File No(s). SAT- SAT-20050203-00018, dated May 24, 2005.

<sup>14</sup> Letter from Pantelis Michalopoulos, Counsel for EchoStar to Thomas Tycz, Chief, Satellite Division, International Bureau, dated May 31, 2005, File No. SAT-STA-20050203-00018. EchoStar requested confidential treatment for the attachment to the response letter.

<sup>15</sup> 47 U.S.C. § 338 as amended by *The Satellite Home Viewer and Reauthorization Act of 2004*, Pub. L. No. 108-447, 118 Stat 2809, 3393 (2004).

<sup>16</sup> EchoStar will continue to be considered a "DBS provider," pursuant to Section 25.701 of the Commission's Rules, 47 C.F.R. § 25.701, in connection with the operations of the EchoStar satellite at the 129° W.L. orbital location.

7. *DISCO II Framework.* The Commission's *DISCO II Order* adopted a framework under which the Commission would consider requests for non-U.S. licensed satellite systems to serve the United States.<sup>17</sup> To implement this framework, the Commission, among other things, established a procedure by which a service provider in the United States could request immediate access to a foreign in-orbit satellite that would serve the U.S. market.<sup>18</sup> This procedure requires the service provider to apply for an earth station license that would list the foreign satellite as an authorized point of communication. Under the *DISCO II* framework, for direct-to-home services such as those involved in this case, we examine whether there are effective competitive opportunities for U.S. licensed satellites to serve the home market of the non-U.S. satellite seeking access to the United States. In particular, we examine whether there are *de jure* or *de facto* barriers to entry for the provision of analogous service, and whether any such barriers would cause competitive distortions in the United States. These factors are considered together with other public interest considerations to determine whether grant of the request would serve the public interest.

8. *DBAC, DirecTV 5, and Competition Issues.* The *DISCO II* framework, as applied in the *DBAC* and *DirecTV 5* cases<sup>19</sup> is relevant in this case. In *DIRECTV 5*, as here, we authorized a U.S. DBS space station operator to move its satellite to a Canadian-authorized orbital position to provide direct-to-home service to the United States. In finding that authorization to be in the public interest, we relied on the *DBAC* case. In *DBAC*, we authorized a U.S. earth station operator to access a Canadian-authorized satellite to provide direct-to-home service to the United States. In finding that authorization to be in the public interest, we first examined whether there were *de jure* or *de facto* barriers to entry in the Canadian market for services analogous to the services *DBAC* was seeking authority to provide in the United States. We found that such *de jure* barriers do exist. However, we also concluded that there was a compelling public interest justification for authorizing such service in the United States, and that grant of the authorization would enhance, rather than distort or harm, competition in the United States. Similarly, in *DirecTV 5*, we concluded that the benefits from grant of *DIRECTV*'s proposal were compelling and warranted favorable action.

9. In *DBAC*, we considered, first, whether competitive distortions might result from authorizing *DBAC* to provide the services proposed. We found that competitive distortions would be likely to result only under a number of conditions: (1) through use of the Canadian satellites, the Applicant would have access to cost savings, subsidies or quality-enhancing assets not available to other U.S. service providers; (2) those cost savings, subsidies, or quality-

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<sup>17</sup> See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, IB Docket No. 96-111, 12 FCC Rcd 24094 (1997) (*DISCO II* or *DISCO II Order*).

<sup>18</sup> See *DISCO II*, 12 FCC Rcd at 24174, ¶ 186. For a more detailed summary of the *DISCO II* framework, see 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, *First Order on Reconsideration*, IB Docket No. 96-111, 15 FCC Rcd 7207, 7209-10, ¶ 4-5 (1999) (*DISCO II First Reconsideration Order*).

<sup>19</sup> Digital Broadband Applications Corp., *Order*, 18 FCC Rcd 9455 (Int'l. Bur. 2003) (*DBAC*). DirecTV Enterprises, LLC, Request for Special Temporary Authority for the *DIRECTV5* Satellite, *Order and Authorization*, 19 FCC Rcd 15529 (Int'l. Bur. 2004) (*DirecTV 5*).

enhancing assets would be sufficiently large to enable the Applicant to offer prices and quality of services that would cause some or all of the incumbent U.S. DTH/DBS providers to exit the market; (3) following exit of some or all of the domestic DTH/DBS providers, the Applicant would be able to raise the price of service to U.S. customers; and (4) entry barriers exist such that neither the incumbent U.S. DTH/DBS providers or new U.S. DTH/DBS providers could enter the market, thereby defeating the price increase.<sup>20</sup> We also noted that competitive distortions related to predatory pricing are a rare phenomenon, in part because of the high risk that they will be unsuccessful.<sup>21</sup> In this case, as in *DIRECTV 5*, while this authorization will provide EchoStar with access to quality-enhancing assets, i.e., satellite capacity for the provision of local-into-local and other services in additional markets in which EchoStar is not currently providing these services, there is no evidence that this access will create a competitive distortion by allowing EchoStar to carry out a predatory strategy.

10. In *DBAC*, we then considered whether there was a compelling public interest justification for authorizing service. We found that, since *DBAC* had not yet entered the markets for DBS or multi-channel video programming distribution (MVPD) services, authorization of *DBAC* to provide these services using Canadian satellites would increase competition in DBS services and in MVPD services generally.<sup>22</sup> Here, we find that there is a compelling public interest justification for granting EchoStar's application because, as EchoStar states in its request, it will facilitate EchoStar's efforts to provide more local-into-local, high-definition, and other programming, and to transition its "two-dish" markets to one dish for all local television broadcast station signals offered in each market.<sup>23</sup> EchoStar further states that allowing it to provide this additional programming from the 129° W.L. orbital position will enable EchoStar to compete more effectively with established cable operators in the MVPD market.<sup>24</sup> Finally, grant of this request will allow EchoStar to operate at an orbital location that was not previously available to consumers in the United States.<sup>25</sup> Inasmuch as there is no competitive distortion associated with this authorization and grant of this authorization will facilitate the increase in provision of local broadcast channel service, we find that the benefits associated with grant of EchoStar's proposal are compelling and warrant approval of this request.

11. *International Coordination/Relationship to DBS Spacing Issues.* The ITU Region 2 Plans for the BSS and associated feeder-links includes an assignment to Canada at the 129° W.L. orbital location. There are no co-frequency U.S. BSS assignments within 9 degrees of the 129° W.L. orbital location, and no current BSS operations by any country within 9 degrees of the 129° W.L. orbital location. Therefore, operations at the 129° W.L. orbital location will not disrupt or degrade any currently operating DBS service.

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<sup>20</sup> *DBAC* at 9462-63, ¶ 16.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> EchoStar 5 STA at 4. "Two-dish" markets are those that require the direct-to-home subscriber to use two satellite dish antennas to receive all local television broadcast signals in a market.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 5-6.

12. *Exchange of Letters with Industry Canada.* We have exchanged letters with Industry Canada in order to ensure that there is a mutual understanding regarding the operation of the EchoStar 5 satellite. The understandings, and the factual background for these understandings, are provided as Annex A and are material considerations for the authorization contained in this Order. In general, the exchange of letters indicates that EchoStar 5 space station operations at the 129° W.L. orbital location will be pursuant to authorization of Ciel by Industry Canada.

13. *Disposition of the EchoStar 5 FCC License.* EchoStar 5 will not be operating pursuant to a Commission authorization once it begins operating at the 129° W.L. orbital location. Accordingly, we are terminating the EchoStar 5 license (Call Sign S2658), effective upon EchoStar 5 reaching the 129° W.L. orbital location.

#### IV. CONCLUSION AND ORDERING CLAUSES

14. Based on the foregoing, we find that grant of EchoStar's requests will serve the public interest by improving the quality of local-into-local, high definition, and other satellite services to its subscribers.

15. Accordingly, IT IS ORDERED, that the application of EchoStar Satellite LLC File No. SAT-STA-20050203-00018 (Call Sign: S2658) is GRANTED, and EchoStar Satellite LLC is authorized for a period of 60 days to relocate EchoStar 5 from the 119° W.L. orbital location to the 129° W.L. orbital location and to conduct space station Telemetry, Tracking and Command communications during the movement of the satellite to the 129° W.L. orbital location, subject to the following conditions:

i.) EchoStar Satellite LLC shall coordinate all drift orbit Telemetry, Tracking, and Control operations with other potentially affected in-orbit operators.

ii.) During relocation of the EchoStar 5 satellite, EchoStar Satellite LLC's operations shall be on a non-harmful interference basis, i.e., EchoStar Satellite LLC shall not cause interference to, and shall not claim protection from interference caused to it by, any other lawfully operating satellites.

iii.) In the event that any harmful interference is caused as a result of EchoStar Satellite LLC's operations during the relocation of the EchoStar 5 satellite, EchoStar Satellite LLC, shall cease operations immediately upon notification of such interference and shall inform the Commission in writing immediately of such an event.

16. IT IS FURTHER ORDERED, that, pursuant to Section 25.137 (c) of the Commission's rules, the application of EchoStar Satellite LLC, File No. SES-LFS-20050203-00133, IS GRANTED, and EchoStar Satellite LLC IS AUTHORIZED, until December 31, 2008, to use 1,000,000 receive-only Earth stations to receive transmissions in the 12.2-12.7 GHz frequency band from the EchoStar 5 satellite at the 129° W.L. orbital location, which is licensed to Ciel Satellite Communications, Inc. by Industry Canada, consistent with the technical parameters specified in its application, and subject to the following condition:

i.) Operations shall be consistent with applicable coordination agreements; to the extent such agreements have not been reached, operations shall be on a non-

harmful interference basis, i.e., operations of the EchoStar 5 satellite shall not cause interference to, and shall not claim protection from, interference caused to it by any other lawfully operating satellites.

17. IT IS FURTHER ORDERED, that, effective upon the date when the EchoStar 5 satellite reaches the 129° W.L. orbital location, the license for that satellite (Call Sign S2658) IS TERMINATED.

18. EchoStar Satellite LLC shall inform the Commission, through a letter to the Chief, Satellite Division, FCC, within five business days following the date on which the EchoStar 5 satellite reaches the 129° W.L. orbital location.

19. EchoStar Satellite LLC is afforded thirty days to decline these authorizations as conditioned. Failure to respond within this period will constitute formal acceptance of the authorizations as conditioned.

20. This Order is issued pursuant to Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Cassandra C. Thomas  
Deputy Chief, Satellite Division  
International Bureau

## Annex A



International Bureau

Federal Communications Commission  
Washington, DC 20554

June 21, 2005

Ms. Chantal Beaumier  
Director, Space and International Regulatory Activities  
Radiocommunications and Broadcasting Regulatory Branch  
Industry Canada  
15<sup>th</sup> Floor, 300 Slater Street  
Ottawa, Ontario, Canada  
K1A 0C8

Re: Operations of the EchoStar 5 Space Station

Dear Ms. Beaumier:

This letter is to confirm the informal understandings of the Canadian Department of Industry (Industry Canada) and the Federal Communications Commission (FCC) concerning certain technical issues involved in the operation, pursuant to an agreement between EchoStar Satellite LLC (EchoStar) and Ciel Satellite Communications Inc. (Ciel), of a Broadcasting-Satellite Service (BSS) satellite known by EchoStar and Ciel as EchoStar 5. The following explanation is derived from the agreement.

**The Transaction Between EchoStar and Ciel**

EchoStar currently operates the EchoStar 5 satellite at the 119° W.L. orbital location, subject to FCC authority. Under an agreement between EchoStar and Ciel, EchoStar agreed to move the EchoStar 5 satellite to the 129° W.L. orbital location,<sup>1</sup> subject to necessary governmental approvals. The agreement provides EchoStar with an exclusive right to use all of the capacity on the EchoStar 5 satellite at the 129° W.L. orbital location until the in-service date of the Ciel-2 satellite at the 129° W.L. orbital location, which is expected to be prior to December 31, 2008. Under the agreement, EchoStar may move the EchoStar 5 satellite to one of its FCC licensed orbital locations in the event that EchoStar 5 is needed to replace some or all of the capacity of certain EchoStar satellites due to an anomaly or anomalies in EchoStar's satellite fleet. Additionally, as provided for in the agreement, operations of the EchoStar 5 satellite may

<sup>1</sup> The term "129° W.L. orbital location," refers to the nominal orbital position for the relevant Canadian frequency assignment under the ITU Region 2 Plan for BSS and Feeder Link Assignments, as contained in Appendix 30/30A of the Radio Regulations, and to any specific orbital location within the cluster defined by such assignment.



continue for a period of time at the 129° W.L. orbital location under certain circumstances such as in the event of a launch failure of the Ciel-2 satellite.

The agreement contemplates that, once EchoStar 5 is at the 129° W.L. orbital location, it will be operated under Ciel's direction and control. EchoStar will perform telemetry, tracking, and control functions (TT&C functions) under Ciel's direction and control during EchoStar 5's term of service at the 129° W.L. orbital location.

On February 1, 2005, Industry Canada provided Ciel with an approval in principle to develop and operate a broadcast-satellite space station at the 129° W.L. orbital location. EchoStar has filed with the FCC a request for Special Temporary Authorization to move the EchoStar 5 satellite from its currently authorized location to the 129° W.L. orbital location, and a request to deploy earth stations in the United States that would receive signals from EchoStar 5, once licensed by Industry Canada for operations at the 129° W.L. orbital location.

The agreement requires EchoStar to take steps necessary to comply with U.S. export control regulations.

**Informal Understandings Between Industry Canada and the FCC on certain technical issues concerning operation of EchoStar 5**

It is my understanding that our two agencies have concurred on the following technical issues concerning the operation of EchoStar 5:

1. At the 129° W.L. orbital location, the EchoStar 5 spacecraft will operate subject to Canadian authority. Because this location is a Canadian entry to the Region 2 Plan of Appendix 30 /30A of the ITU Radio Regulations, the Canadian administration will have responsibility for compliance with the ITU Radio Regulations (including the requirement for licensing as specified in Article 18.1 of the Radio Regulations, and any applicable agreement-seeking procedures) in connection with operation of the EchoStar 5 satellite at the 129° W.L. orbital location.
2. Any operations of the EchoStar 5, other than at the 129° W.L. orbital location, will be subject to licensing by the FCC, including any operations as a result of equipment failure in the satellite that result in the inability to maintain the satellite within  $\pm 0.1$  degrees of its assigned position at the 129° W.L. orbital location.
3. Industry Canada, through the Director, Space and International Regulatory Activities, once the Canadian licensee has been informed, will provide the FCC with 4 (four) days advance written notice (email with confirmed receipt from the FCC's Chief, International Bureau, Satellite Division, will be considered sufficient) of any planned termination or expiration of the Canadian License for the EchoStar 5 satellite.

4. EchoStar's ability to use the EchoStar 5 satellite, in the event of failure of an EchoStar satellite, within the time frame specified in the EchoStar/Ciel agreement, is a private contractual matter between EchoStar and Ciel.
5. Industry Canada will condition the EchoStar 5 License to require Ciel to maintain, barring catastrophic failure of satellite components, the capability to de-orbit the EchoStar 5 spacecraft to an orbit consistent with ITU Recommendation S.1003-1, Environmental Protection of the Geostationary-Satellite Orbit.

The informal understandings set forth in this letter concerning operation of the EchoStar 5 satellite do not constitute a concurrence by the FCC or the U.S. Administration with any Canadian filings with the ITU Radiocommunication Bureau at the 129° W.L. orbital location under Appendices 30 or 30A of the ITU Radio Regulations. It is my understanding that the FCC and Industry Canada will, separately, and as part of the agreement-seeking process applicable under the ITU Radio Regulations, work in good faith to complete that process, insofar as necessary, in connection with the operation of the EchoStar 5 satellite at the 129° W.L. orbital location.

The FCC has not issued any of the authorizations that would be necessary to provide direct-to-home services to customers in the United States using the EchoStar 5 satellite at the 129° W.L. orbital location. The FCC has received both an application for Special Temporary Authority (STA) to relocate the EchoStar 5 satellite to the 129° W.L. orbital location, and an application for a blanket authorization of Earth stations seeking to receive direct-to-home transmissions in the United States from the EchoStar 5 satellite at the 129° W.L. orbital location. These applications will require separate action by the FCC. This exchange of letters does not constitute approval of either of these applications.

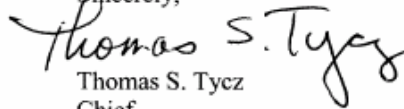
In the event of the failure of an EchoStar satellite, and upon the exercise by EchoStar of its contractual rights to move the EchoStar 5 satellite, and in the event that there are any provisions in Ciel's license from Industry Canada, or any provisions in the Canadian laws and regulations governing the telecommunications operations of Ciel that would preclude or otherwise limit the exercise of EchoStar's contractual rights within the time frames specified in the EchoStar/Ciel agreement, the FCC would appreciate the opportunity to consult with Industry Canada, prior to any exercise of such licensing authority, or application of such law or regulation by Industry Canada. I would appreciate acknowledgement of these views and expression of any views which Industry Canada may have concerning the matter discussed in this paragraph. Let me also express the FCC's willingness to discuss this matter further, in the event, at a later date, it becomes necessary to do so.

Lastly, all notices, inquiries, and correspondence from Industry Canada concerning these matters should be directed to the Chief, Satellite Division, International Bureau (phone number 202.418.0719) (email Thomas.Tycz @fcc.gov, with a copy to Karl.Kensinger@fcc.gov), on the part of the FCC. The FCC will forward all notices, inquires, and correspondence concerning these matters to the Director, Space and International Regulatory Activities (phone number

613.998.3819) (email [beaumier.chantal@ic.gc.ca](mailto:beaumier.chantal@ic.gc.ca)), on the part of Industry Canada. Please let us know if this address subsequently changes.

If the foregoing corresponds to your understanding of the informal arrangements between our two agencies concerning the various technical issues involved in the operation of EchoStar 5, please confirm by return letter. Thank you.

Sincerely,



Thomas S. Tycz  
Chief  
Satellite Division

cc: Kevin Smyth  
CEO  
Ciel Satellite Corporation

David K. Moskowitz  
Executive Vice President and General Counsel  
EchoStar Satellite, LLC



Industry Canada Industrie Canada

300 Slater Street  
Ottawa, ON K1A 0C8

Our File: 05943-1  
(EDRMS# 32432)

**JUN 22 2005**

Thomas S. Tycz  
Chief, Satellite Division  
International Bureau  
Federal Communications Commission  
Washington, D.C. 20554

Dear Mr. Tycz:

Thank you for your letter of June 21, 2005 setting out our informal common understandings concerning certain technical issues involved in the operation of a Broadcasting-Satellite Service (BSS) satellite, known by Ciel Satellite Communications Inc (Ciel) and EchoStar Satellite LLC. (EchoStar) as EchoStar 5.

I am pleased to provide my confirmation of our informal understandings and acknowledgement of the other views expressed in your letter. Additionally, Industry Canada acknowledges that, in the event of termination of the lease agreement owing to the failure of a EchoStar satellite, EchoStar's ability to use the EchoStar 5 satellite at an orbital position licensed by the FCC is a private contractual matter between EchoStar and Ciel. Nonetheless, should there be any provisions in Ciel's licence, or any provisions in the Canadian laws and regulations governing the telecommunications of Ciel, that would preclude or otherwise limit the exercise of EchoStar's contractual rights to terminate the lease and use the satellite within the time frames specified in the EchoStar/Ciel agreement, the FCC would be informed, to the extent possible under the circumstances and the law, of the exercise of licensing authority, or application of law or regulation by Industry Canada.

...2

**Canada**

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Once again, I want to express my appreciation for the support your administration is giving to this kind of commercial arrangement to facilitate the delivery of important and valuable satellite services in our respective countries.

Sincerely,



Chantal Beaumier  
Director, Space and International  
Regulatory Activities

cc: Kevin Smyth, Ciel Satellite Communications