

April 9, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Office of the Secretary
Federal Communications
Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Submission of Critical Design Review Milestone Compliance
Mobile Satellite Ventures Subsidiary LLC
Call Sign S2358 (MSV-1)
File Nos. SAT-LOA-19980702-00066, SAT-AMD-20001214-00171, SAT-
AMD-20010302-00019, SAT-AMD-20031118-00335, SAT-AMD-
20040209-00014, and SAT-AMD-20040928-00192**

Dear Ms. Dortch:

Pursuant to Section 25.164(d) of the Commission's Rules and the decision of the International Bureau granting the above-captioned application to operate an L band geostationary Mobile Satellite Service ("MSS") satellite,¹ Mobile Satellite Ventures Subsidiary LLC ("MSV") hereby submits a certification (see Attachment 1) of completion of the Critical Design Review ("CDR") milestone set forth in its satellite manufacturing contract with Boeing Satellite Systems, Inc. ("Boeing"). Additionally, in support of its certification, MSV submits a letter from Boeing, certifying completion of CDR for MSV's satellite and receipt of all payments due under the manufacturing contract as of the date of this letter (see Attachment 2).

Subject to the confidentiality request stated below, MSV is also submitting the following documents ("CDR Documents") to the FCC: (1) a chart summarizing payments under the manufacturing contract (see Attachment 3); and (2) a soft copy (provided on CD ROM) of the CDR report and supporting documentation supplied by Boeing (see Attachment 4). MSV offers these documents, along with the certifications, as evidence that MSV is proceeding with timely construction of its satellite under the milestone schedule proposed in its license.²

¹ 47 C.F.R. § 25.164(d); *see Mobile Satellite Ventures Subsidiary LLC*, 20 FCC Rcd 9752 (2005).

² *See* Public Notice, DA 04-787 (March 25, 2004).

The CDR Documents, Attachments 3 and 4, contain highly-sensitive commercial and financial information. Specifically, the CDR Documents contain information regarding amounts due, payments terms, and technical criteria specified in MSV's satellite contract with Boeing. Consistent with the Freedom of Information Act ("FOIA") and the Commission's regulations and policies,³ MSV requests confidential treatment of these materials and has redacted them from the public version of this letter.⁴ The disclosure of such information would likely cause substantial competitive and financial harm to MSV (and Boeing), and therefore, this information is exempted from mandatory disclosure under FOIA Exemption 4 and the Commission's implementing regulations. *See* 5 U.S.C. § 522(b)(4); 47 C.F.R. § 0.457(d).

In conformity with Section 0.459(b) of the Commission's rules, MSV submits the following:

- (1) MSV requests confidential treatment of the CDR Documents, i.e. Attachments 3 and 4 of this submission.
- (2) The CDR Documents are being submitted as required under Section 25.164(d) to demonstrate the completion of MSV's CDR milestone.
- (3) The CDR Documents contain information regarding amounts due, payment terms, and technical criteria, which constitutes trade secrets or sensitive commercial and financial information that "would customarily be guarded from competitors"⁵ and is therefore exempted from mandatory disclosure under FOIA Exemption 4 and Section 0.457(d) of the Commission's implementing regulations. *See* 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).
- (4) The CDR Documents are related to the deployment of a next-generation L band MSS system, which is subject to competition from a number of MSS providers.
- (5) Disclosure of the information would result in substantial competitive harm to MSV (and Boeing). The CDR Documents contain specific information regarding costs,

³ *See* 5 U.S.C. §§ 522 *et seq.*; 47 C.F.R. §§ 0.457, 0.459; *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, at ¶¶ 187, 191 (2003).

⁴ Under separate cover, a copy of this letter with the confidential CDR Documents is being submitted directly to Helen Domenici, International Bureau Chief, and Andrea Kelly, Chief of the Satellite Division Policy Branch. This precaution is being taken in order to avoid any unintentional disclosure to the public of the highly-sensitive technical and financial information contained in the CDR Documents. The CDR Documents should be withheld from public inspection and should not be placed in the public files.

⁵ 47 C.F.R. § 0.457(d)(2).

schedules regarding delivery and construction, technical specifications, payment schedule, as well as implicit assumptions about MSV's business plans. All of this information is customarily guarded from competitors and other satellite vendors. Competitors could use this information to market services to MSV's current and prospective customers or to obtain more favorable terms in their negotiations with satellite vendors.⁶ Public disclosure would also allow competitors to obtain detailed proprietary technical information regarding system characteristics and performance requirements developed and paid for by MSV.⁷ Further, public disclosure of the unique terms of the agreement would give satellite vendors an advantage in any future negotiations with MSV.

(6) MSV has taken protective measures to ensure that the information contained in the CDR Documents is not disclosed to the public. The documents have been provided only to a limited number of MSV employees or agents and are not generally available internally. In fact, Article 31 of the manufacturing contract with Boeing requires that the parties maintain the confidentiality of information contained in the contract.

(7) This information has not been made available to the public in the past. To MSV's knowledge, it has not been disclosed to third parties, except when under an agreement of confidentiality.

(8) The CDR Documents should be withheld from disclosure for an indefinite period of time. During the operational life of the satellite, satellite vendors and competitors could use the information in the CDR Documents to their competitive advantage and to MSV's detriment, as explained above. Moreover, there is no public benefit to be derived from disclosure of the specific confidential information.

(9) The Commission has acknowledged repeatedly that satellite construction contracts contain competitively sensitive information requiring protection from public disclosure.⁸ Indeed, in a recent rulemaking, the Commission stated "we have recognized that specific dollar amounts and . . . detailed technical specifications of satellites warrant confidential treatment."⁹ This is exactly the type of information contained in the CDR Documents.

⁶ See, e.g., *In re Application of Mobile Communications Holding, Inc.*, 10 FCC Rcd 1547 (1994) ("[B]uyers receive a clear competitive advantage if they know the prices that other buyers have been charged as a result of individual negotiations.").

⁷ See *In re American Satellite Company*, 1985 FCC LEXIS 3117 (1985) (public disclosure of technical information would result in competitive injury).

⁸ See, e.g., *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, at ¶ 187 (2003); *GE American Communications, Inc.*, 16 FCC Rcd 6371 (2001).

⁹ *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd

For the foregoing reasons, the request for confidential treatment should be granted. Please contact the undersigned if you should have any questions regarding this matter.

Very truly yours,

/s/

Jennifer Manner

Of counsel:

Bruce D. Jacobs
David S. Konczal
Tony Lin
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW
Washington, D.C. 20037
(202) 663-8000

Attachments

cc: (w/attachments)
Helen Domenici (confidential version)
Andrea Kelly (confidential version)

Footnote continued from previous page
10760, at ¶ 187 (2003).

Attachment 1

CERTIFICATION

I, Scott Macleod, hereby certify under penalty of perjury that:

1. I am the Executive Vice President and Chief Financial Officer of Mobile Satellite Ventures Subsidiary LLC.
2. To the best of my knowledge, information, and belief, as of the date of this filing, MSV has met each of the contract milestones and payments due under its manufacturing contract with Boeing Satellite Systems, Inc., which are listed in Attachment 3 of this submission.
3. To the best of my knowledge, information, and belief, MSV has completed the Critical Design Review of the satellite authorized by the FCC in *Mobile Satellite Ventures Subsidiary LLC*, 20 FCC Rcd 9752 (2005).

Executed on 4/9/07.


Scott Macleod

Attachment 2



28 March 2007

In Reply Refer to: 07(T9)94270

Mobile Satellite Ventures LP
10802 Parkridge Boulevard
Reston, Virginia 20191-5416

Attention: Mr. Michael S. Cannice
Director, Contracts Administration

Subject: Contract MSV-ATC-01 – Satellite Critical Design Review Certification

Dear Mr. Cannice:

Pursuant to the MSV L-Band Space-Based Network Contract, as executed on 9 January 2006 (the "Contract"), Boeing Satellite Systems, Inc. ("BSS") is submitting this declaration of completion of the Critical Design Review (CDR) for the MSV L-Band Satellites. By this letter, BSS hereby certifies that the CDR was completed on 9 February 2007, in accordance with the requirements contained in the Contract Statement of Work Section 2.2.9, as approved by MSV.

The Contract was in full force and effect as of the CDR completion date and as of the date hereof. Further, as of the date hereof, BSS has received from MSV all of the payments due and owing under the Contract. The amount of each payment is specified in Exhibit I to the Contract. The invoice for completion of the CDR work (designated for "Billing Month 16") will be submitted to MSV on 9 April 2007.

In accordance with Section 1.16 of the rules of the Federal Communications Commission, 47 C.F.R. Section 1.16, I, the undersigned, acting on behalf of Boeing Satellite Systems, Inc. hereby declare under penalty of perjury that to the best of my information and belief, the foregoing is true and correct.

Executed on 28 March 2007.

Very truly yours,

A handwritten signature in black ink that reads "Dennis R. Beeson".

Dennis R. Beeson
Sr. Contracts Manager
Boeing Satellite Systems, Inc.

Boeing Satellite Systems, Inc.
P. O. Box 92919
Los Angeles, CA 90009-2919

Attachment 3

(REDACTED)

Attachment 4

(REDACTED)