



CONFIDENTIAL

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CONFIDENTIAL TREATMENT REQUESTED

FILED/ACCEPTED

July 26, 2010

JUL 26 2010

Federal Communications Commission  
Office of the Secretary

**BY HAND DELIVERY**

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

Re: ***DIRECTV Enterprises, LLC***  
IBFS File Nos. SAT-LOA-20060908-00099, SAT-AMD-20080114-00013, and SAT-AMD-20080321-00076 (S2711)

Dear Ms. Dortch:

Pursuant to Section 25.164(b) of the Commission's rules and Condition 5a of the authorization issued in the above referenced proceedings,<sup>1</sup> DIRECTV Enterprises, LLC ("DIRECTV") hereby submits a non-redacted copy of its contract for construction of the DIRECTV RB-1 satellite (the "Contract") by Space Systems/Loral. ("SS/L"). DIRECTV respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment to redacted portions of the Contract, submitted for the International Bureau's consideration in connection with DIRECTV's demonstration of milestone compliance. This document contains sensitive trade secrets, and commercial and financial information that fall within Exemption 4 of the Freedom of Information Act ("FOIA").<sup>2</sup>

Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to matters that are . . . (4) trade secrets and commercial or

<sup>1</sup> See Grant Stamp, IBFS File Nos. SAT-LOA-20060908-00099, SAT-AMD-20080114-00013, and SAT-AMD-20080321-00076, Condition 5a (granted July 28, 2009).

<sup>2</sup> 5 U.S.C. § 552(b)(4)

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financial information obtained from a person and privileged or confidential.”<sup>3</sup> DIRECTV is voluntarily providing this trade secret and commercial and financial information “of a kind that would not customarily be released to the public” in order to demonstrate compliance with a regulatory requirement; therefore, this information is “confidential” under Exemption 4 of FOIA.<sup>4</sup> Moreover, DIRECTV would suffer substantial competitive harm if the Contract were disclosed.<sup>5</sup>

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules,<sup>6</sup> DIRECTV hereby states as follows:

**1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT<sup>7</sup>**

DIRECTV seeks confidential treatment of those portions of the Contract that were redacted from the version that is being publicly filed concurrently herewith. These portions of the Contract reflect key economic terms and technological attributes of the satellite and therefore should be treated in their entirety as a trade secret. In the context of FOIA, a trade secret is defined as “as secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.”<sup>8</sup> The parties have extensively negotiated the terms of the Contract, which reflects the design of a state-of-the-art satellite and the confidential commercial and financial terms for their procurement.

**2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION<sup>9</sup>**

DIRECTV is submitting the Contract to the Commission as required by rule and by licensing condition in order to demonstrate compliance with the first performance milestone, which would also result in reduction of DIRECTV’s performance bond. DIRECTV is also submitting a redacted version of this document for the public record.

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<sup>3</sup> *Id.*

<sup>4</sup> *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>5</sup> *See National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

<sup>6</sup> 47 C.F.R. § 0.459(b).

<sup>7</sup> 47 C.F.R. § 0.459(b)(1).

<sup>8</sup> *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983); *see also AT&T Information Systems, Inc. v. GSA*, 627 F. Supp. 1396, 1401 n.9 (D.D.C. 1986).

<sup>9</sup> 47 C.F.R. § 0.459(b)(2).

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**3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED<sup>10</sup>**

The Contract contains highly sensitive, confidential, and proprietary commercial and technical information, including trade secrets regarding the construction of satellite spacecraft. The Contract also contains highly sensitive, confidential and proprietary commercial and financial information regarding the prices, terms and conditions upon which DIRECTV and SS/L enter into satellite manufacturing arrangements with customers and suppliers. DIRECTV and SS/L treat such information as highly confidential and do not disclose it to third parties. As such, the information qualifies as material that “would customarily be guarded from competitors.”<sup>11</sup> The redacted information contained in the Contract would not customarily be released by the persons from whom they are obtained and are therefore covered by Exemption 4 of FOIA when, as here, it is submitted by such persons to the Government.

**4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION<sup>12</sup>**

Confidential information in the Contract concerns highly competitive markets in which both DIRECTV and SS/L participate. The Contract contains trade secrets and confidential information that is commercially sensitive within the satellite manufacturing industry. The satellite manufacturing industry is extremely competitive, with the current global supply of satellite manufacturing capacity greatly exceeding the actual demand for satellite construction services. Similarly, DIRECTV competes in the MVPD marketplace and faces competition from terrestrial and satellite MVPD competitors. U.S. DBS competitors to DIRECTV with deployed U.S. DBS systems include DISH Network, and a number of foreign DBS systems have sought or may seek access to U.S. consumers, which will further increase competition to DIRECTV.<sup>13</sup>

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<sup>10</sup> 47 C.F.R. § 0.459(b)(3).

<sup>11</sup> 47 C.F.R. § 0.457.

<sup>12</sup> 47 C.F.R. § 0.459(b)(4).

<sup>13</sup> *See, e.g., Spectrum Five LLC*, 21 FCC Rcd. 14023 (IB 2006) (granting authority to provide DBS service in the U.S. from satellites licensed by the Netherlands).

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**5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM<sup>14</sup>**

SS/L is a major manufacturer of satellite and aerospace systems. SS/L maintains a competitive edge vis-à-vis other satellite manufactures by offering customers the benefits of its experience and expert technical design capability. SS/L also competes in the highly competitive satellite manufacturing market based on the cost advantages of its economies of scale. Release of the technical, cost or pricing information contained in the Contract could compromise SS/L's competitive edge in the satellite manufacturing market, resulting in substantial competitive harm to SS/L. Similarly, this information would enable DIRECTV's competitors to unfairly benefit from the time and resources that DIRECTV has expended in designing and negotiating for construction of advanced satellites.

**6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE<sup>15</sup>**

DIRECTV and SS/L do not permit the dissemination of the Contract to non-employees without the execution of a confidentiality agreement. Furthermore, SS/L requires its satellite customers to request confidential treatment as a part of any submission of a satellite construction contract to government agencies, such as the Commission. In addition, the Contract contains technical data potentially subject to the U.S. Government's International Traffic in Arms Regulations ("ITAR").<sup>16</sup> As such, its dissemination to non-U.S. citizens or companies without prior approval may be a violation of federal law.

**7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES<sup>17</sup>**

The Contract is not available to the public and, to the best of DIRECTV's knowledge, has not been disseminated to non-DIRECTV or non-SS/L personnel without the execution of a confidentiality agreement (except for the redacted version being submitted to the Commission). Accordingly, DIRECTV requests that the Commission accord the information covered by this Request confidential treatment under Sections 0.457 and 0.459 of the Commission's rules.

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<sup>14</sup> 47 C.F.R. § 0.459(b)(5).

<sup>15</sup> 47 C.F.R. § 0.459(b)(6).

<sup>16</sup> See 22 C.F.R. § 120.10.

<sup>17</sup> 47 C.F.R. § 0.459(b)(7).

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**8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE<sup>18</sup>**

DIRECTV requests that the Contract be permanently withheld from public disclosure. Release of this information at any time in the future would cause substantial competitive harm to DIRECTV and SS/L. This period matches the nondisclosure commitment of the parties to the agreement,<sup>19</sup> which is market evidence of the time period necessary to protect the confidentiality of competitively sensitive proprietary information contained therein. Therefore, DIRECTV's request for ongoing confidential treatment is reasonable.

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For the foregoing reasons, DIRECTV respectfully requests that the redacted portions of the Contract be granted confidential status and be withheld from public inspection. If confidential treatment is not granted for all or any part of this confidential material, DIRECTV requests that all non-redacted copies of the Contract be returned to DIRECTV.

If you have any questions, please do not hesitate to contact undersigned counsel.

Respectfully submitted,

  
William M. Wiltshire  
*Counsel for DIRECTV Enterprises, LLC*

Enclosure

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<sup>18</sup> 47 C.F.R. § 0.459(b)(8).

<sup>19</sup> See Contract at Article 24 (Proprietary Information).