

From: Jennifer Manner

To: Nimesh Sangani
Date: January 08, 2021

Subject: Confidential document

Message:

See attachment



REQUEST FOR CONFIDENTIAL TREATMENT

January 8, 2021

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Experimental License Application
File No. 0539-EX-CN-2020
Correspondence Reference Nos. 59168 & 57969

Dear Ms. Dortch:

Pursuant to Section 0.459 of the Commission's rules and Section 552(b)(4) of the Freedom of Information Act ("FOIA"),¹ EchoStar Global Australia Pty Ltd. ("EchoStar Global") requests confidential treatment of all information ("Information") contained in an unredacted copy of Attachment B, filed on November 16 at Commission staff's request.² In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, EchoStar Global submits the following:

(1) *Identification of specific information for which confidential treatment is sought:*

Confidential treatment is sought for all Information contained in an unredacted copy of Attachment B, as filed in the record on November 16. The Information consists of technical input data and calculations using NASA Debris Assessment Software.

(2) *Identification of the Commission proceeding in which the information was submitted or description of the circumstances giving rise to the submission:*

As noted above, the Information was previously submitted at Commission staff's request (Correspondence Reference No. 57969), in support of the above-referenced experimental license application.

¹ See 47 C.F.R. § 0.459; 5 U.S.C. § 552(b)(4).

² See Letter from Jennifer A. Manner, EchoStar Global, to Nimesh Sangani, FCC, File No. 0539-EX-CN-2020, Attachment B (Requirement 4.5-1 DAS 2.0.2 LOG) (Nov. 16, 2020) (subject to request for confidential treatment).

- (3) *Explanation of the degree to which the information is commercial or financial, or contains trade secrets or is privileged:*

The Information consists of business and technical data relating to the design, construction, and operation of EchoStar Global's mobile satellite service ("MSS") constellation, and thus contains competitively sensitive trade secrets and commercial information that would customarily be guarded from competitors.³ Consequently, such Information constitutes "confidential commercial, financial or technical data," and qualifies for confidential treatment under Section 0.457(d) of the Commission's rules.⁴

- (4) *Explanation of the degree to which the information concerns a service that is subject to competition:*

The Information concerns the design, construction, and operation of an MSS constellation that will provide commercial narrowband data services, including machine-to-machine and Internet-of-things communications, to subscribers throughout the world. Such commercial MSS offerings are subject to competition from numerous satellite and terrestrial service providers. Additionally, construction of the MSS constellation is subject to competition from numerous satellite manufacturers.

- (5) *Explanation of how disclosure of the information could result in substantial competitive harm:*

Public disclosure of the Information will cause substantial competitive and financial harm to EchoStar Global and its satellite manufacturer by allowing competitors to gain valuable insight into the technical design, construction, and operation of the EchoStar Global satellite constellation.

- (6) *Identification of any measures taken by the submitting party to prevent unauthorized disclosure:*

EchoStar Global and its satellite manufacturer have taken steps to safeguard all of the confidential Information from public disclosure, including marking the Information as confidential and specifying terms to restrict disclosure of the Information.

- (7) *Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:*

The Information is not generally available to the public and has been disclosed to third parties in accordance with applicable nondisclosure agreements or requirements.

³ See 47 C.F.R. § 0.457.

⁴ See 47 C.F.R. § 0.457(d)(2).

(8) *Justification of the period during which the submitting party asserts that material should not be available for public disclosure:*

EchoStar Global requests that the Information be withheld indefinitely from public inspection. During and after the operational lifetime of EchoStar Global's MSS constellation, competing service providers and satellite manufacturers could use the otherwise confidential Information to their advantage and to the detriment of EchoStar Global and its satellite manufacturer.

(9) *Any other information that the party believes useful in assessing the confidentiality request:*

The competitively sensitive Information is exempted from mandatory disclosure under FOIA Exemption 4, which allows the withholding of commercial or financial information that is privileged or confidential.⁵ The confidentiality requirement is satisfied if substantial competitive injury would likely result from disclosure.⁶ As noted above, public disclosure of the Information will cause substantial competitive harm to EchoStar Global and its satellite manufacturer, thus more than satisfying the Exemption 4 standard for nondisclosure.

In the event that any person or entity requests disclosure of the Information contained in the unredacted copy of Attachment B, EchoStar Global requests that it be so notified immediately so it can oppose the request or take any other action to safeguard its interests. Please direct any questions regarding this request for confidential treatment to the undersigned.

Sincerely,

/s/ Jennifer A. Manner

Jennifer A. Manner
Senior Vice President of Regulatory Affairs

cc: Nimesh Sangani (FCC)

⁵ 5 U.S.C. § 552(b)(4); *see also Public Citizen Research Group v. FDA*, 704 F. 2d 1280, 1290-91 (D.C. Cir. 1983) (“*Public Citizen*”).

⁶ *See Public Citizen*, 704 F.2d at 1290-91.