



LEVENTHAL SENTER & LERMAN PLLC

August 24, 2007

STEPHEN D. BARUCH  
(202) 416-6782

E-MAIL  
SBARUCH@LSL-LAW.COM

DIRECT FAX  
(202) 429-4626

**CONFIDENTIALITY REQUEST PURSUANT TO 47 C.F.R. § 0.459**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Request for Confidential Treatment for Northrop Grumman Space & Mission Systems Corp. Description of Program of Experimentation and Request for Expedited Consideration, File No. 0383-EX-PL-2007**

Dear Ms. Dortch:

Northrop Grumman Space & Mission Systems Corporation (“NGST”), by counsel, hereby requests that its attached Description of Program of Experimentation and Request for Expedited Consideration (“NGST Description”), and all attachments thereto, be held in confidence and not made available for public inspection pursuant to Section 0.459 of the Commission’s rules. NGST is submitting the NGST Description in conjunction with its application for an Experimental Radio Service license (File No. 0383-EX-PL-2007).

The NGST Description contains details and technical parameters of NGST’s proposal. The NGST Description includes technical parameters of the space and ground segment it seeks to use. Confidential treatment of the NGST Description and its attachments is appropriate under Exemption 4 of the Freedom of Information Act (“FOIA”), which applies to information constituting “trade secrets and commercial or financial information” that “would not customarily be released to the public.” *See* 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

In support of this request, NGST provides the following information, as required under Section 0.459(b) of the Commission’s Rules –

**1. *Specific Information for Which Confidential Treatment is Sought - § 0.459(b)(1):*** NGST seeks confidential treatment for the NGST Description that constitutes the narrative exhibit being provided in response to Question 7 on the FCC Form 442 Application of NGST for a new Experimental Radio Service license in File No. 0383-EX-PL-2007.



Ms. Marlene H. Dortch  
August 24, 2007  
Page 2 of 4

2. ***Circumstances Giving Rise to the Submission - § 0.459(b)(2):*** NGST provides the materials in satisfaction of the obligation to provide an explanation of the program of experimentation in Question 7 of FCC Form 442.

3. ***Degree to Which the Information Is Commercial or Financial, or Contains A Trade Secret or Is Privileged - § 0.459(b)(3):*** The NGST Description contains the operational details of a program of experimentation that NGST is conducting to demonstrate the viability of a new satellite service offering in support of Federal Government programs. This is commercially sensitive information which would customarily be guarded from competitors. This information includes, but is not limited to, payload characteristics, ground station characteristics, operational conditions, and associated information. In each case, these details could not only be competitively harmful if disclosed to competitors, but could also adversely impact future negotiations between NGST and its potential contractors and customers.

4. ***Degree to Which the Information Concerns a Service That Is Subject to Competition - § 0.459(b)(4):*** As the Commission is aware, there is substantial competition in the satellite industry among both service providers and systems manufacturers. The program NGST is undertaking represents a new segment of the industry, and one NGST believes will continue to attract competitive offerings.

5. ***How Disclosure of the Information Could Result In Substantial Competitive Harm - § 0.459(b)(5):*** Information about both the status and content of the technical and operational arrangements NGST has made, and which is reflected in the NGST Description, could be misused by potential competitors to gain commercially exploitable knowledge of the company's prospective service and product offerings, thereby allowing them to reap unfair advantages in formulating their own plans, pursuing technical development of competing systems, and/or negotiating their own payload arrangements. Now is a particularly critical time for a company that is pursuing a novel service solution to protect its plans from disclosure. Release of the details of this project to potential competitors would allow others to benefit from plans and information that NGST has spent considerable time and money developing, and to adapt their own plans based on NGST's approach.

6. ***Measures Taken By NGST to Prevent Unauthorized Disclosure - § 0.459(b)(6):*** NGST and Israel Aerospace Industries Ltd. ("IAP") have signed a Non-Disclosure Agreement ("NDA"). NGST has limited access to the information in the NGST Description solely to those employees, contractors and agents who require knowledge of the arrangements' terms in order to perform their duties and fulfill the company's obligations. NGST expects that future arrangements will be subject to strict and customary confidentiality terms.



Ms. Marlene H. Dortch  
August 24, 2007  
Page 3 of 4

**7. *The Information Submitted Is Not Available To The Public and Has Not Previously Been Disclosed To Third Parties, Except For Appropriately Limited Circumstances* - § 0.459(b)(7):** No technical or operational details of the NGST Description have been publicly disclosed, and the information therein is not available to the public.

**8. *Period During Which The Submitted Material Should Not Be Available For Public Disclosure* - § 0.459(b)(8):** NGST respectfully requests that the NGST Description and the attachments thereto be kept confidential indefinitely, or at least until NGST notifies the Commission that confidential treatment is no longer required.

**9. *Other Information Supporting Request for Confidential Treatment* - § 0.459(b)(9):** The Commission has long recognized that satellite industry is competitive. Here, NGST is conducting a demonstration program that could open a new and interesting front for an industry that is constantly stretching the state of the art in terms of efficient use of the valuable orbital/spectrum resource. That the program NGST is undertaking to explore could have important ramifications for future Federal Government programs heightens the need for confidentiality. The Commission has adhered to a policy of declining to disclose such proprietary information “on the mere chance” that such disclosure might be helpful to a third party in some fashion, and has typically required a showing prior to disclosure that the information provides “a necessary link in a chain of evidence” that will resolve an open issue before the Commission.<sup>1</sup> As the NGST Description could very well lead to future contractual agreements of a type the Commission routinely protects, and that there is no strong countervailing interest in disclosure of NGST’s plans, confidential treatment is appropriate.

\* \* \* \* \*

---

<sup>1</sup> See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 8 (1998).



Ms. Marlene H. Dortch  
August 24, 2007  
Page 4 of 4

For all of the foregoing reasons, NGST respectfully requests that the Commission withhold the NGST Description and its attachments from public inspection, according them fully confidential treatment. In the event that a request for examination of these documents is filed, NGST requests an opportunity to respond and to provide a redacted version of the NGST Description and its attachments in lieu of full disclosure.

Respectfully submitted,

NORTHROP GRUMMAN SPACE &  
MISSION SYSTEMS CORPORATION

By: \_\_\_\_\_

  
Stephen D. Baruch

Leventhal Senter & Lerman PLLC  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006  
(202) 429-8970

Its Attorneys

cc: Mr. Peter J. Hadinger  
Northrop Grumman Space & Mission Systems Corporation