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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
Received

April 5, 2004

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Policy Branch
International Bureau

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

Re: Iridium 2GHz LLC
Request for Confidential Treatment
File Nos. 187-SAT-P/LA-97(96), SAT-LOA-19970926-00147; SAT-AMD-20001103-00156; SAT-MOD-20030828-00286

Dear Ms. Dortch:

Pursuant to Section 552(b)(4) of the U.S. Code, and Sections 0.457 and 0.459 of the Rules of the Federal Communications Commission ("FCC" or "Commission"),¹ Iridium 2GHz LLC, by its attorneys, respectfully requests that the Commission withhold from public inspection and afford confidential treatment to the Amendment Agreement No. 2 dated April 5, 2004 and its Exhibit entered into by Boeing Satellite Systems, Inc. ("Boeing") and Iridium 2GHz LLC (the "Contract Amendment").

Pursuant to a March 25, 2004 request by the Commission's International Bureau (the "Bureau"), an un-redacted, confidential version of the Contract Amendment has been sent via electronic delivery to Mr. Karl Kensinger at the Bureau.² A redacted version of the Contract Amendment has been filed with the Commission's Secretary under separate cover for inclusion in the Commission's public files.

Iridium requests confidential treatment of the Contract Amendment because it contains precisely the type of sensitive and proprietary commercial information that,

¹ 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d); 47 C.F.R. § 0.459.

² See Letter from Thomas Tycz, Chief, Satellite Division, International Bureau to Peter D. Shields, counsel for Iridium (dated Mar. 25, 2004) (*March 25, 2004 Tycz Letter*).

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if disclosed, could be of value to Iridium's competitors and detrimental to Iridium and its interests. The Contract Amendment contains specific proprietary information regarding the satellite design and construction program, and detailed technical specifications. Iridium would be placed at a significant disadvantage if the detailed terms of the agreement and the satellite design and construction process were revealed to the numerous competing companies that stand to benefit competitively from any such knowledge. Indeed, the Commission has specifically recognized this type of information as warranting confidential treatment.³ Moreover, this information falls squarely within the fourth exemption ("Exemption 4") to the provisions of the Freedom of Information Act ("FOIA").⁴

Exemption 4 allows parties to withhold from the public "trade secrets and commercial or financial information obtained from any person and privileged or confidential."⁵ Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will have either of the following effects: (1) impairs the government's ability to obtain necessary information in the future; or (2) causes substantial harm to the competitive position of the person from whom the information was obtained.⁶

Section 0.457(d)(2) of the Commission's rules allows persons submitting materials to file a request for non-disclosure, according to Section 552(b)(4) of the FOIA, to ensure the material is withheld from public inspection.⁷ The requirements

³ See Amendment of the Commission's Space Station Licensing Rules and Policies; Mitigation of Orbital Debris, *First R&O and FNPRM*, at ¶187 (released May 19, 2003).

⁴ 5 U.S.C. § 552(b)(4).

⁵ *Id.*

⁶ See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 984 (1993).

⁷ 47 C.F.R. § 0.457(d)(2).

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governing such requests are set forth in Section 0.459(b). In accordance with the specifications delineated in that rule, Iridium hereby submits the following:

1. Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)). As mentioned above, the specific information for which confidential treatment is sought is being submitted to Mr. Karl Kensinger in the Commission's International Bureau. This information includes construction program terms that have been redacted from the public version of the Contract Amendment submitted under separate cover. As stated above, this information comprises commercially sensitive information that falls within Exemption 4 of the FOIA.
2. Identification of the Commission Proceeding in Which the Information was Submitted or a Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2)). As noted above, Iridium is filing the Contract Amendment in response to a March 25, 2004 Bureau request.⁸ The Bureau requested the Contract Amendment in connection with Iridium's 2GHZ Mobile-Satellite Service (MSS) Critical Design Review (CDR) milestone and continued progress toward satellite construction.⁹
3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3)). The Contract Amendment contains extremely sensitive commercial and technical information that would customarily be withheld from competitors. For example, the Contract Amendment contains a Satellite Contract Milestone Schedule relating to the construction program. Iridium, and the satellite manufacturer, Boeing, would be severely prejudiced in their ability to compete if this information were released to competitors. Indeed, the Contract Amendment is marked "Boeing Proprietary." Moreover, Article 21 of the underlying Satellite Contract requires that the proprietary information contained in those documents may only be disclosed with

⁸ *March 25, 2004 Tycz Letter*.

⁹ *See March 25, 2004 Tycz Letter* at 1. *See Application of Iridium LLC; Concerning Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System, Order & Authorization, 16 FCC Rcd 13778 (Int'l Bur. 2001) ("Iridium Order")*.

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Boeing's permission, which Boeing granted conditioned on Iridium's filing of the instant request for confidential treatment. As a result, public disclosure of the confidential terms of the Contract Amendment would materially impair the value of the Boeing-Iridium agreement and is likely to cause substantial harm to the competitive position of both parties.

4. Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4)). Substantial competition exists in the satellite industry. Iridium faces competition from companies operating, or planning to operate, various types of satellites and satellite systems. Those competitors stand to benefit competitively from any proposed satellite design and construction program reflected in the Contract Amendment. For example, disclosure would enable competitors to use such information to gain terms more favorable in their negotiations with contractors, as well as market services to Iridium's customers.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5)). Release of the information for which Iridium requests confidentiality could have a significant impact on Iridium's commercial operations. Disclosure of this information would reveal to Iridium's competitors, the satellite construction industry, and the public commercially sensitive and proprietary information that they could not otherwise obtain, such as the proposed satellite design and construction program. Current or future competitors could use this information to learn details about Iridium's construction program that are highly confidential and are not available in any other public forum. Moreover, disclosure of the information could affect negatively Iridium's future negotiations with satellite construction companies.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6)). Iridium limits access to the information within the Contract Amendment to necessary personnel only. Iridium takes every precaution to ensure that this information is not disclosed to the public. In addition, Article 21 of the underlying Satellite Contract requires both Iridium and Boeing to keep proprietary information confidential, and Article 23 of the Satellite Contract requires each party to avoid public releases of information without the express prior written consent of the other party. Moreover, Article 21 of the underlying Satellite Contract requires that the proprietary information contained in those documents may only be

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disclosed with Boeing's permission, which Boeing granted conditioned on Iridium's filing of the instant request for confidential treatment.

7. Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7)). Iridium has not made the Contract Amendment available to the public and has not disclosed the information to any third parties. Moreover, Article 21 of the underlying Satellite Contract requires that the proprietary information contained in those documents may only be disclosed with Boeing's permission, which Boeing granted conditioned on Iridium's filing of the instant request for confidential treatment. Furthermore, Iridium is providing the Contract Amendment in response to the Commission's request for limited purposes in connection with Iridium's CDR milestone and continued progress toward satellite construction.

8. Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8)). Iridium respectfully requests that the specific information for which Iridium seeks confidential treatment be withheld from public inspection indefinitely. It is possible that any disclosure could jeopardize Iridium's competitive position.

Should the Commission refuse to extend confidential treatment to these materials, Iridium respectfully requests that they be returned to Iridium without submission to the public files.

Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

IRIDIUM 2GHz LLC

By: Peter D. Shields / PDH
Peter D. Shields
Attorney for Iridium 2GHz LLC

Attachments

cc: Thomas Tycz
Karl Kensinger (via hand delivery)