



LEVENTHAL SENTER &amp; LERMAN PLLC

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

October 12, 2004

Received

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Policy Branch  
International Bureau**BY HAND**

Mr. Thomas S. Tycz  
Chief, Satellite Division  
International Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Supplement to Response to May 10, 2004 Commission Letter  
File Nos. SAT-LOA-19990427-00046, SAT-AMD-20030730-00151,  
SAT-AMD-20040130-00008, SAT-AMD-20040205-00012, and  
SAT-AMD-20040524-00106**

Dear Mr. Tycz:

Lockheed Martin Corporation ("Lockheed Martin"), by counsel, hereby requests that a document being provided in connection with Lockheed Martin's supplemental response ("Supplemental Response"), filed today, to the International Bureau's May 10, 2004 letter<sup>1</sup> concerning the above-referenced applications be held in confidence and not made available for public inspection pursuant to Section 0.459 of the Commission's rules. The May 10 Letter directed Lockheed Martin to provide additional information concerning its agreement with Telesat Canada Corporation ("Telesat") for Lockheed Martin to operate a radionavigation satellite service payload on board Telesat's Anik F1R satellite at the 107.3 W.L. orbital location. Lockheed Martin provided its initial response on May 24, 2004, and is submitting via a separate electronic filing a further description of its operational arrangements with Telesat for spacecraft and payload TT&C.

In its Supplemental Response, Lockheed Martin is also providing an explanation of measures that it intends to implement to ensure its ability to control from the United States and its Possessions ("US&P") the power amplifiers of the RPS RNSS payload on Anik F1R. A copy of the clarifying letter, however, is being submitted separately pursuant to this request for confidential treatment. Confidential treatment of this document 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

<sup>1</sup> Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, Federal Communications Commission, to ("May 10 Letter")



public.” Moreover, release to the public of such details would raise infrastructure security concerns. See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d). For public use purposes, Lockheed Martin offers the following description: “Lockheed Martin has taken measures to ensure that it has control in the United States and its Possessions (US&P) over the power to the RNSS payload on the Anik FIR satellite.”

In support of this request, Lockheed Martin 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):** Lockheed Martin seeks confidential treatment for the attached Letter of Understanding between it and Telesat, which contains a technical discussion of the operational approach that the parties intend to take with respect to Lockheed Martin’s remote control of the RPS RNSS payload on Anik FIR.
- 2. Circumstances Giving Rise to the Submission - § 0.459(b)(2):** As explained above, the International Bureau on May 10, 2004 requested additional information from Lockheed Martin concerning its space segment capacity arrangements with Telesat. Lockheed Martin provided an initial response on May 24, 2004, and as a result of further discussions with Bureau staff is now filing a Supplemental Response to address additional questions regarding the operational relationship between Lockheed Martin and Telesat with respect to control of Lockheed Martin’s RPS RNSS payload on the Anik F IR satellite.
- 3. Degree to Which the Information Is Commercial or Financial, or Contains A Trade Secret or Is Privileged - § 0.459(b)(3):** The Letter of Understanding for which Lockheed Martin is requesting confidential treatment contains commercially sensitive information “which would customarily be guarded from competitors.”<sup>2</sup> This information includes, but is not limited to, specific terms relating to payload characteristics and operational considerations relating to a confidential contract between Lockheed Martin and Telesat. These details reflect arrangements between these parties, the disclosure of which would not only be competitively harmful if disclosed to competitors, but could also adversely impact future negotiations between Lockheed Martin and Telesat, as well as potential contractors or customers. Disclosure of these terms would be damaging to both companies. Accordingly, public disclosure of the confidential terms of these documents could materially impair the agreements.
- 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 commercial provision of RNSS is a new segment of the industry, and Lockheed Martin believes one that will continue to attract competitive offerings.

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<sup>2</sup> James A. Kay, Jr., 17 FCC Rcd 1834 (2002) (withholding such information from public inspection).



**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 operational arrangements between Lockheed Martin and Telesat reflected in the Letter of Understanding could be misused by potential competitors to gain commercially exploitable knowledge of the company's technical arrangements for RNSS, thereby allowing them to reap unfair advantages in formulating their own plans, pursuing technical development of competing systems, and/or negotiating their own RNSS payload arrangements. Because commercial RNSS solutions are just beginning to emerge in the U.S. and international marketplace, now is a particularly critical time for a company that is pursuing a unique 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 Lockheed Martin has spent considerable time and money developing, and to adapt their own plans based on Lockheed Martin's approach.

**6. *Measures Taken By Lockheed Martin to Prevent Unauthorized Disclosure - § 0.459(b)(6):*** In Article 19 of the underlying agreement between Lockheed Martin and Telesat, the parties specifically agree to strict limitations on use and disclosure of the proprietary information. In accordance with these contract provisions, Lockheed Martin has limited access to the information solely to those employees, contractors and agents who require knowledge of the agreements' terms in order to perform their duties and fulfill the company's obligations under each agreement. Any other disclosure not compelled by law requires prior written consent of the other party. Additional arrangements contemplated under these agreements, such as the Letter of Understanding, are subject to the same confidentiality terms.

**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 part of the agreements between Lockheed Martin and Telesat, including the Letter of Understanding, has been publicly disclosed. As set forth in the basic agreements, disclosure has been limited by the parties to the "employees, contractors and agents [of Lockheed Martin and Telesat] who have a need to know such Proprietary Information in the performance of their obligations" under the agreements. These agreements have not yet been released any other US Government agency, including the Federal Aviation Administration ("FAA"). However, upon future disclosure to the FAA by Lockheed Martin, the FAA is obligated to protect the information as contractor proprietary information and not release it publicly.

**8. *Period During Which The Submitted Material Should Not Be Available For Public Disclosure - § 0.459(b)(8):*** Lockheed Martin respectfully requests that the confidential information attached hereto, which is submitted in connection with its Supplemental Response, be kept confidential indefinitely. Under terms of the agreements, the period during which the parties are required to maintain confidential treatment extends three years beyond the end of each agreement's respective term, as separately defined in each agreement. Accordingly, Lockheed Martin requests that the Commission maintain confidential treatment of the agreements at least until it notifies the Commission that the contractual periods have expired, and 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 space segment construction contracts contain competitively sensitive information.<sup>3</sup> The Commission has therefore adhered to a policy of declining to disclose such contracts "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>4</sup> As the Letter of Understanding provided here contemplates additional arrangements pursuant to such a contract, confidential treatment is appropriate.

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For all of the foregoing reasons, Lockheed Martin requests that the Commission withhold the attached document from public inspection, according it fully confidential treatment. In the event that a request for examination of this document is filed, Lockheed Martin requests an opportunity to respond and to provide a redacted version in lieu of full disclosure.

Respectfully submitted,

LOCKHEED MARTIN CORPORATION

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

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<sup>3</sup> See *Amendment of Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶ 187 (2003).

<sup>4</sup> See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 8 (1998).