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April 13, 2006

Federal Communications Commission
Office of Secretary

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

S2647 SAT-AMD-20060407-00040 IB200600095
Intelsat North America LLC
Intelsat Americas-9

Re: **Intelsat North America LLC Request for Confidential Treatment**
File No. SAT-AMD-_____ ; Call Sign: S2467

Dear Ms. Dortch:

Intelsat North America LLC ("Intelsat North America"), by its attorneys, respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 & 0.459, the Commission withhold from public inspection and accord confidential treatment to the attached contract between Intelsat LLC and Space Systems/Loral, Inc. ("Space Systems/Loral") for the Intelsat Americas 9 ("IA-9") spacecraft, including exhibits A-G thereto ("Contract") dated March 11, 2005. This agreement contains commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

Exemption 4 permits parties to withhold from public information "trade secrets and commercial or financial information obtained from a person and privileged or confidential-categories of materials not routinely available for public inspection." *Id.* Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. 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).

Section 0.457(d)(2) allows persons submitting materials that they wish be withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure, pursuant to Section 0.459. In accordance with the requirements contained in Section 0.459(b), for such requests, Intelsat North America hereby submits the following:

(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*: Intelsat North America seeks confidential treatment

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SAT-RPL-20041015-00201
Intelsat North America LLC
INTELSAT AMERICAS-9

S2647

Ms. Marlene Dortch

April 13, 2006

Page 2

for the enclosed binding non-contingent agreement between Intelsat North America and Space Systems/Loral for construction of the IA-9 satellite. The agreement contains commercially sensitive information that falls within Exemption 4 of FOIA, and such information is inextricably intertwined with other provisions of the Contract. *See Mead Data Cent. v. United States Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*: Intelsat North America submits this Contract to demonstrate compliance with the first milestone for construction of IA-9 and thereby obtain a reduction in the amount of the bond required by the Commission. *See Amendment to Reduce Bond Requirement for IA-9*, File No. SAT-AMD-_____ (filed Apr. 13, 2006).

(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 contains sensitive commercial and financial information that competitors could use to Intelsat North America's disadvantage. The courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings. *See Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980). The Commission has broadly defined commercial information, stating that "[c]ommercial' is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

Certain categories of confidential commercial and financial information appear throughout the Contract, including without limitation: descriptions of technical work programs; spacecraft performance specifications; business planning information; financial terms and conditions; and pricing and financial nonperformance penalties, all of which were negotiated between Intelsat North America and Space Systems/Loral. The Contract provides for the custom design of IA-9, a state-of-the-art satellite. The Contract provides insight into the process for developing this modern satellite, its design, and the process of managing construction and placement into service. This information is inextricably

Ms. Marlene Dortch

April 13, 2006

Page 3

intertwined with the other provisions of the Contract. Thus, the Contract in its entirety should be treated as confidential. A decision not to treat this information as confidential could affect the Commission's ability to obtain necessary information in the future, and disclosure likely would cause substantial harm to the competitive positions of Intelsat North America and Space Systems/Loral.

(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 telecommunications satellite industry. Other players in the geo-stationary satellite services market include SES Americom, Eutelsat, Telesat, and Satmex, among others. The Contract concerns the design, development, and construction of the IA-9 satellite, which will compete with satellite services offered by these other companies, as well as with the services of terrestrial providers. The presence of these many competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*: Release of the Contract could have a significant impact on Intelsat North America's commercial operations. If competitors had access to the information for which Intelsat North America seeks confidential treatment, it could be used as the basis for negotiating their own satellite construction contracts to meet their own milestones, to develop a competing satellite network, and/or to develop competing service offerings, whether satellite or terrestrial. If Intelsat North America's competitors obtained access to this information, they would unfairly benefit from the time and resources that Intelsat North America expended in negotiating the Contract and meeting the construction and CDR milestones for IA-9, and could use this information to negotiate more favorable terms in their own construction contracts. This could allow competitors to better compete against Intelsat North America and could negatively affect Intelsat North America's future negotiations with potential and existing business partners/customers. Thus, it is "virtually axiomatic" that the information qualifies for withholding under Exemption 4 of FOIA, *see National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir., 1976), and under Sections 0.457(d)(2) and 0.459(b).

(6) *Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*: Intelsat North America has gone to great lengths to ensure that this Contract is not disclosed to third parties or otherwise disclosed to

Ms. Marlene Dortch

April 13, 2006

Page 4

unauthorized parties. The Contract contains provisions requiring both parties to maintain confidentiality of proprietary information, which includes the terms of the Contract. The Contract includes detailed procedures for use of proprietary information by representatives of both Intelsat North America and Space Systems/Loral, and requires written consent for the release of any proprietary information.

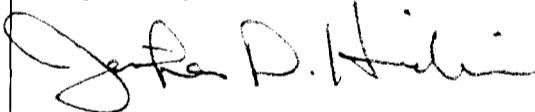
(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))*: Intelsat North America has not made this Contract available to the public and has not disclosed this Contract to any third parties.

(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))*: Intelsat North America respectfully requests that the Commission withhold this Contract from public inspection for the life of the satellite. On balance, the need to protect Intelsat North America from competitive harm as a result of disclosure of this Contract outweighs any benefit of public disclosure which, in the ordinary course of business, would not otherwise occur.

Accordingly, for the foregoing reasons, Intelsat North America respectfully requests that the information contained in its Contract with Space Systems/Loral for construction of the IA-9 satellite be kept confidential and be withheld from public inspection in its entirety .

Please contact the undersigned with any questions.

Respectfully submitted,



Jennifer D. Hindin