

# ORBCOMM®

May 18, 2009

FILED/ACCEPTED

MAY 18 2009

Federal Communications Commission  
Office of the Secretary

## HAND DELIVERED

Robert Nelson, Chief  
Satellite Division  
International Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: ORBCOMM License Corp.**  
***Order & Authorization, DA 08-633 (March 21, 2008), 23 FCC Rcd 4804***  
**FCC Call Sign S2103**  
**File No. SAT-~~MOD-20070531-00076~~**  
**File No. SAT-AMD-20071116-00161**

**Request For Determination of Compliance With First Three ORBCOMM  
Generation 2 Satellite Implementation Milestones & Reduction of  
Performance Bond**

**Supplemental Submission**

**REQUEST FOR CONFIDENTIAL TREATMENT**

Dear Mr. Nelson:

Pursuant to Sections 0.457(d) and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457(d) & 0.459, the Freedom of Information Act, 5 U.S.C. 552 ("FOIA"), and the Trade Secrets Act, 18 U.S.C. § 1905, ORBCOMM Inc. and its wholly-owned subsidiary ORBCOMM License Corp. (collectively "ORBCOMM") respectfully request that the confidential trade secret information submitted herewith (the "Confidential Materials") not be placed in the public file and otherwise be withheld from public inspection. The Confidential Materials consist of the following items:

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<b>Exhibit</b>	<b>Description</b>
<b>B</b>	ORBCOMM Generation 2 Satellite Manufacturing Contract Payments To Date
<b>C</b>	ORBCOMM Generation 2 CDR Document Package
<b>D</b>	Satellite Construction Status Report
<b>E</b>	Satellite Construction Status Photographs

The Confidential Materials are being submitted in connection with a concurrently-filed supplemental submission relating to ORBCOMM's above-referenced satellite implementation milestone certification.<sup>1</sup> Consistent with Commission policies and practices, ORBCOMM is submitting a redacted non-confidential version of the Confidential Materials in the public file.<sup>2</sup> ORBCOMM requests that the Confidential Materials be withheld from public disclosure by the Commission for an indefinite period, or for the maximum permissible time.

ORBCOMM has a proprietary right in its confidential commercial information. ORBCOMM has expended substantial financial and in-kind resources to organize and develop its business. ORBCOMM also has taken significant precautionary steps and measures to maintain and safeguard its confidential information, including the information contained in the Confidential Materials.

The Confidential Materials contain specific, highly sensitive proprietary technical, commercial, and financial information relating to ORBCOMM's next generation satellite program, including but not limited to details regarding technical designs, specifications and manufacturing processes, amounts due, payment terms and schedules, financial and performance incentives, and unique commercial terms and conditions. None of the information contained in the Confidential Materials has previously been publicly disclosed.

As the owner and operator of the ORBCOMM satellite system, ORBCOMM is subject to substantial worldwide competition from other satellite and terrestrial service providers. Public disclosure of the Confidential Materials could allow ORBCOMM's competitors ready access to extremely sensitive proprietary company information, which, under normal business circumstances, is not and would not be publicly disclosed. Among other things, such disclosure could enable unfair competition with ORBCOMM. Public disclosure of the Confidential

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<sup>1</sup> See, *Request For Determination of Compliance With First Three ORBCOMM Generation 2 Satellite Implementation Milestones & Reduction of Performance Bond*, FCC Call Sign S2103 (filed March 20, 2009).

<sup>2</sup> *Id.*

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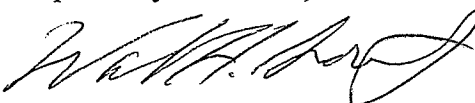
Materials could also jeopardize the successful outcome of future ORBCOMM satellite procurement negotiations. Accordingly, public disclosure of any of the information contained in the Confidential Materials is likely to cause competitive injury and substantial irreparable harm<sup>3</sup> to ORBCOMM, and is therefore exempted from mandatory disclosure under FOIA Exemption 4,<sup>4</sup> and Section 0.457(d) of the Commission's rules, 47 C.F.R. § 0.457(d).

The Confidential Materials, particularly including but not limited to, Exhibits C, D, and E are also subject to statutory disclosure restrictions to prevent unauthorized export pursuant to Arms Export Control Act ("AECA")<sup>5</sup> and the associated provisions of the International Traffic in Arms Regulations ("ITAR").<sup>6</sup> The Commission's public records are readily accessible to foreign persons<sup>7</sup> that cannot be readily identified for purposes of export control compliance. Accordingly, the AECA & ITAR controlled Confidential Materials should not be placed in the Commission's public file and should be otherwise withheld from public inspection pursuant to FOIA Exemption 3, which is invoked with respect to information prohibited from disclosure by another statute.<sup>8</sup>

For all the above-stated reasons, the Commission should grant ORBCOMM's instant Request For Confidential Treatment, and should not place the Confidential Materials in the public file and otherwise should withhold the Confidential Materials from public inspection.<sup>9</sup>

Kindly direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,



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<sup>3</sup> See, e.g., National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

<sup>4</sup> 5 USC § 552(b)(4). See, e.g., Public Citizen Health Research Group v. FDA, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

<sup>5</sup> 22 U.S.C. § 2778.

<sup>6</sup> 22 C.F.R. §§ 120-129. Technical data relating to commercial satellites is AECA & ITAR controlled technical data. 22 C.F.R. § 121.1.

<sup>7</sup> 22 C.F.R. § 120.16.

<sup>8</sup> 5 USC § 552(b)(3).

<sup>9</sup> ORBCOMM requests immediate Commission notification of any request for disclosure of the Confidential Materials so that ORBCOMM can oppose such request or take other actions as deemed necessary.