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CONFIDENTIAL TREATMENT REQUESTED

July 27, 2011

BY HAND DELIVERY

FILED/ACCEPTED

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

JUL 27 2011

Federal Communications Commission
Office of the Secretary

Re: **DIRECTV Enterprises, LLC**
IBFS File Nos. SAT-LOA-20060908-00100, SAT-AMD-20080114-00014, and SAT-AMD-20080321-00077 (Call Sign S2712)

Dear Ms. Dortch:

On July 26, 2010, pursuant to Section 25.164(b) of the Commission’s rules and Paragraph 37a of the authorization issued in the above referenced proceedings,¹ DIRECTV Enterprises, LLC (“DIRECTV”) submitted a copy of its contract for construction of the DIRECTV RB-2 satellite by Space Systems/Loral (“SS/L”). DIRECTV has recently amended Exhibit B to that contract, and the technical specifications included therein were the basis for the critical design review (“CDR”) performed on the spacecraft. In connection with its submission of materials to satisfy its CDR milestone, DIRECTV is hereby submitting a non-redacted copy of that exhibit as amended (the “Amendment”).

As it did with the submission of its original contract, DIRECTV respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment to the redacted portions of the Amendment, submitted for the International Bureau’s consideration in connection with DIRECTV’s demonstration of milestone compliance. This document contains sensitive trade secrets, and commercial

¹ See *DIRECTV Enterprises, LLC*, 24 FCC Rcd. 9393, ¶ 37a (Int’l Bur. 2009). See also 47 C.F.R. §25.164(b).

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and financial information that fall within Exemption 4 of the Freedom of Information Act (“FOIA”).²

Exemption 4 of FOIA provides that the public disclosure requirement of the statute “does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.”³ DIRECTV is voluntarily providing this trade secret and commercial and financial information “of a kind that would not customarily be released to the public” in its ongoing effort to demonstrate compliance with a regulatory requirement; therefore, this information is “confidential” under Exemption 4 of FOIA.⁴ Moreover, DIRECTV would suffer substantial competitive harm if the Amendment were disclosed.⁵

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules,⁶ DIRECTV hereby states as follows:

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT⁷

DIRECTV seeks confidential treatment of those portions of the Amendment that were redacted from the version that is being publicly filed concurrently herewith. These portions of the Amendment set forth the revised Satellite Performance Specifications for DIRECTV RB-2. This exhibit, which was also redacted in its entirety in DIRECTV’s original contract submission, reflects key technological attributes of the satellite and therefore should be treated in its entirety as a trade secret. In the context of FOIA, a trade secret is defined as “as secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.”⁸ The parties have extensively negotiated the terms of the Amendment, which reflects the design of a state-of-the-art satellite.

² 5 U.S.C. § 552(b)(4).

³ *Id.*

⁴ *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

⁵ *See National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

⁶ 47 C.F.R. § 0.459(b).

⁷ 47 C.F.R. § 0.459(b)(1).

⁸ *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983); *see also AT&T Information Systems, Inc. v. GSA*, 627 F. Supp. 1396, 1401 n.9 (D.D.C. 1986).

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2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION⁹

DIRECTV is submitting the Amendment to the Commission in furtherance of the showing required by rule and by licensing condition in order to demonstrate compliance with the first performance milestone, which would also result in reduction of DIRECTV's performance bond. DIRECTV is also submitting a redacted version of this document for the public record.

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED¹⁰

The Amendment contains highly sensitive, confidential, and proprietary commercial and technical information, including trade secrets regarding the construction of satellite spacecraft. DIRECTV and SS/L treat such information as highly confidential and do not disclose it to third parties. As such, the information qualifies as material that "would customarily be guarded from competitors."¹¹ The redacted information contained in the Amendment would not customarily be released by the persons from whom they are obtained and are therefore covered by Exemption 4 of FOIA when, as here, it is submitted by such persons to the Government.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION¹²

Confidential information in the Amendment concerns highly competitive markets in which both DIRECTV and SS/L participate. The Amendment contains trade secrets and confidential information that is commercially sensitive within the satellite manufacturing industry. The satellite manufacturing industry is extremely competitive, with the current global supply of satellite manufacturing capacity greatly exceeding the actual demand for satellite construction services. Similarly, DIRECTV competes in the MVPD marketplace and faces competition from terrestrial and satellite MVPD competitors. U.S. DBS competitors to DIRECTV with deployed U.S. DBS systems include DISH Network, and a number of foreign DBS systems have sought or may seek access to U.S. consumers, which will further increase competition to DIRECTV.¹³

⁹ 47 C.F.R. § 0.459(b)(2).

¹⁰ 47 C.F.R. § 0.459(b)(3).

¹¹ 47 C.F.R. § 0.457.

¹² 47 C.F.R. § 0.459(b)(4).

¹³ *See, e.g., Spectrum Five LLC*, 21 FCC Rcd. 14023 (IB 2006) (granting authority to provide DBS service in the U.S. from satellites licensed by the Netherlands).

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5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM¹⁴

SS/L is a major manufacturer of satellite and aerospace systems. SS/L maintains a competitive edge vis-à-vis other satellite manufactures by offering customers the benefits of its experience and expert technical design capability. SS/L also competes in the highly competitive satellite manufacturing market based on the cost advantages of its economies of scale. Release of the technical information contained in the Amendment could compromise SS/L's competitive edge in the satellite manufacturing market, resulting in substantial competitive harm to SS/L. Similarly, this information would enable DIRECTV's competitors to unfairly benefit from the time and resources that DIRECTV has expended in designing and negotiating for construction of advanced satellites.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE¹⁵

DIRECTV and SS/L do not permit the dissemination of the Amendment to non-employees without the execution of a confidentiality agreement. Furthermore, SS/L requires its satellite customers to request confidential treatment as a part of any submission of a satellite construction contract to government agencies, such as the Commission. In addition, the Amendment contains technical data potentially subject to the U.S. Government's International Traffic in Arms Regulations ("ITAR").¹⁶ As such, its dissemination to non-U.S. citizens or companies without prior approval may be a violation of federal law.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES¹⁷

The Amendment is not available to the public and, to the best of DIRECTV's knowledge, has not been disseminated to non-DIRECTV or non-SS/L personnel without the execution of a confidentiality agreement (except for the redacted version being submitted to the Commission). Accordingly, DIRECTV requests that the Commission accord the information covered by this Request confidential treatment under Sections 0.457 and 0.459 of the Commission's rules.

¹⁴ 47 C.F.R. § 0.459(b)(5).

¹⁵ 47 C.F.R. § 0.459(b)(6).

¹⁶ See 22 C.F.R. § 120.10.

¹⁷ 47 C.F.R. § 0.459(b)(7).

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8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE¹⁸

DIRECTV requests that the Amendment be permanently withheld from public disclosure. Release of this information at any time in the future would cause substantial competitive harm to DIRECTV and SS/L. This period matches the nondisclosure commitment of the parties to the agreement,¹⁹ which is market evidence of the time period necessary to protect the confidentiality of competitively sensitive proprietary information contained therein. Therefore, DIRECTV's request for ongoing confidential treatment is reasonable.

* * *

For the foregoing reasons, DIRECTV respectfully requests that the redacted portions of the Amendment be granted confidential status and be withheld from public inspection. If confidential treatment is not granted for all or any part of this confidential material, DIRECTV requests that all non-redacted copies of the Amendment be returned to DIRECTV.

If you have any questions, please do not hesitate to contact undersigned counsel.

Respectfully submitted,


William M. Wiltshire
Counsel for DIRECTV Enterprises, LLC

Enclosure

¹⁸ 47 C.F.R. § 0.459(b)(8).

¹⁹ See Contract at Article 24 (Proprietary Information).