



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

April 24, 2009

Jennifer D. Hindin
202.719.4975
jhindin@wileyrein.com

VIA IBFS AND HAND DELIVERY

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

Re: Request for Confidential Treatment Pursuant to Sections 0.457 and 0.459 of the Commission's Rules

**Intelsat New Dawn Company, Ltd., Demonstration of Milestone Compliance and Request for Bond Reduction; Call Sign: S2751
File Nos. SAT-LOA-20080509-00101 and SAT-AMD-20081205-00223**

Dear Ms. Dortch:

Intelsat New Dawn Company, Ltd. ("Intelsat New Dawn"), by its attorneys and pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 and 0.459, respectfully requests that the Commission withhold from public inspection and accord confidential treatment to two exhibits containing spacecraft technical specifications and a statement of work for the Intelsat New Dawn Satellite (Call Sign S2571) ("Exhibits"). These Exhibits supplement the construction contract filed on March 31, 2009 as part of Intelsat New Dawn's demonstration of milestone compliance and request for a bond reduction in connection with its above-referenced grant of authority to launch and operate a satellite at 32.8° E.L.¹

These Exhibits contain confidential information that falls within Exemption 3 of the Freedom of Information Act ("FOIA"). *See* 5 U.S.C. § 552(b)(3); 47 C.F.R. § 0.457(d). Exemption 3 exempts from public disclosure "[m]aterials that are specifically exempted from disclosure by statute," provided that the statute "(1) requires that the materials be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of materials to be withheld."² The Commission has determined that Exemption 3 applies to Section 4(j) of the Communications Act,

¹ IBFS File No. SAT-LOA-20080509-00101 and File No. SAT-AMD-20081205-00223 (stamp grant on Jan. 9, 2009, with conditions).

² 5 U.S.C. § 552(b)(3).



Marlene Dortch
April 24, 2009
Page 2

which provides, in part, that “[t]he Commission is authorized to withhold publication of records of proceedings containing secret information affecting the national defense.”³

These Exhibits also contain commercially sensitive information that falls within Exemption 4 of FOIA. *See* 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d). Exemption 4 permits parties to withhold from public inspection “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) and Section 552(b)(3) 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 New Dawn hereby submits the following:

(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*. Intelsat New Dawn seeks confidential treatment for Exhibits A1 and B1 to a Fixed Price Contract Between New Dawn Satellite Company Ltd and Orbital Sciences Corporation dated January 27, 2009. These Exhibits contain commercially and technically sensitive information that falls within Exemptions 3 and 4 of FOIA. New Dawn Satellite Company Ltd is a subsidiary of Intelsat New Dawn.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*: Intelsat New Dawn submits these Exhibits to demonstrate milestone compliance and seek a bond reduction in connection with its application for authority to launch and operate the New Dawn satellite at 32.8° E.L. The FCC

³ 47 U.S.C. § 154(j); *see* 47 C.F.R. § 0.457(c)(1).

Marlene Dortch
April 24, 2009
Page 3

requires geostationary satellite licensees to post a bond upon grant of a license. The Commission allows licensees to reduce this bond upon meeting certain milestones. The submission of these Exhibits, in conjunction with a construction contract already submitted to the FCC, demonstrate that Intelsat New Dawn has met the first milestone, and should consequently be permitted to reduce the amount its bond.

(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 Exhibits contain “Technical Data,” as defined under the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. § 120.10), and, as such, may not be exported, disclosed, or otherwise transferred to any “Foreign Person” as defined under the ITAR (22 C.F.R. § 120.16) without the prior written authorization of the U.S. Government. The material is thus “secret information affecting the national defense” protected under Exemption 3 of FOIA.

The Exhibits also contain sensitive commercial information that competitors could use to Intelsat New Dawn’s disadvantage. The courts have given the term “commercial,” as used in Section 552(b)(4), its ordinary meaning. *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)).

The Exhibits contain proprietary information regarding the construction of the Intelsat New Dawn satellite. The information contained in these Exhibits meet both definitions of “confidential.” First, a decision not to treat this information as confidential could affect the Commission’s ability to obtain necessary information in the future. Second, disclosure of this information likely will cause substantial harm to the competitive positions of Intelsat New Dawn and Orbital Sciences Corporation.

(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 large players in the geostationary

Marlene Dortch
April 24, 2009
Page 4

satellite service market include Eutelsat, SES Americom and Telesat. The presence of these large 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 Exhibits could have a significant impact on Intelsat New Dawn's commercial operations. If business partners/customers or competitors had access to this information, it could negatively affect Intelsat New Dawn's future negotiations with potential and existing business partners/customers. Specifically, business partners/customers could use the information gleaned from the Exhibits to negotiate more favorable terms in their own agreements. Competitors could use this information to better compete against Intelsat New Dawn. 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))*: None of this information is provided to the public, and Intelsat New Dawn does not provide this information to third parties except pursuant to agreements to maintain confidentiality. The Exhibits also contain an ITAR warning to prevent unauthorized disclosure to foreign persons.

(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 New Dawn has not made these Exhibits available to the public and has not disclosed these Exhibits 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 New Dawn respectfully requests that the Commission withhold these Exhibits from public inspection indefinitely. On balance, the need to protect Intelsat New Dawn from competitive harm as a result of disclosure of these Exhibits, as well as comply with the ITAR, outweighs any benefit of public disclosure which, in the ordinary course of business, would not otherwise occur.

Accordingly, for the foregoing reasons, Intelsat New Dawn respectfully requests that the information contained in the Exhibits be kept confidential and be withheld from public inspection at all times.



Marlene Dortch
April 24, 2009
Page 5

Please contact the undersigned with any questions. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer D. Hindin".

Jennifer D. Hindin
Counsel for Intelsat New Dawn Company, Ltd.