



CONFIDENTIAL TREATMENT REQUESTED

June 27, 2014

ACCEPTED/FILED
JUN 27 2014

Federal Communications Commission
Office of the Secretary

BY HAND DELIVERY

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

Re: ***DIRECTV Enterprises, LLC***
IBFS File Nos. SAT-LOA-20120316-00051 and SAT-AMD-20120420-
00071 (Call Sign S2861)

Dear Ms. Dortch:

Pursuant to Section 25.164(d) of the Commission's rules and Paragraph 6b of the authorization issued in the above referenced proceedings,¹ DIRECTV Enterprises, LLC ("DIRECTV") hereby submits a non-redacted copy of the package ("CDR Package") prepared as a result of the critical design review performed pursuant the contract for construction of the DIRECTV KU-79W satellite by Orbital Sciences Corporation ("OSC") in electronic form. 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 CDR Package, submitted for the International Bureau's consideration in connection with DIRECTV's demonstration of milestone compliance. These materials contain sensitive trade secrets, and commercial 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

¹ See *Stamp Grant*, IBFS File Nos. SAT-LOA-20120316-00051 and SAT-AMD-20120420-00071, Condition 6b (granted July 12, 2012). See also 47 C.F.R. §25.164(d).

² 5 U.S.C. § 552(b)(4).

³ *Id.*

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is voluntarily providing this trade secret and commercial and financial information “of a kind that would not customarily be released to the public” in order 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 CDR Package 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 the entire CDR Package. These materials reflect key technological attributes of the satellite and therefore should be treated in their 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 CDR Package reflects a thorough evaluation of the design of a state-of-the-art satellite, including the proprietary technology embodied therein.

2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION⁹

DIRECTV is submitting the CDR Package to the Commission as required by rule and by licensing condition in order to demonstrate compliance with the second performance milestone, which would also result in reduction of DIRECTV’s performance bond.

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).

⁹ 47 C.F.R. § 0.459(b)(2).

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

The CDR Package contains highly sensitive, confidential, and proprietary commercial and technical information, including trade secrets regarding the construction of satellite spacecraft. DIRECTV and OSC 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 information contained in the CDR Package 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 CDR Package concerns highly competitive markets in which both DIRECTV and OSC participate. The CDR Package 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

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

OSC is a major manufacturer of satellite and aerospace systems. OSC maintains a competitive edge vis-à-vis other satellite manufactures by offering customers the benefits of its experience and expert technical design capability. OSC also competes in the highly competitive satellite manufacturing market based on the cost advantages of its economies

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 (Int’l Bur. 2006) (granting authority to provide DBS service in the U.S. from satellites licensed by the Netherlands).

¹⁴ 47 C.F.R. § 0.459(b)(5).

of scale. Release of the technical and other information contained in the CDR Package could compromise OSC's competitive edge in the satellite manufacturing market, resulting in substantial competitive harm to OSC. Similarly, this information would enable DIRECTV's competitors to unfairly benefit from the time and resources that DIRECTV has expended in designing, negotiating for, and evaluating construction of advanced satellites.

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

DIRECTV and OSC do not permit the dissemination of the CDR Package to non-employees without the execution of a confidentiality agreement. Furthermore, OSC requires its satellite customers to request confidential treatment as a part of any submission of a satellite construction CDR Package to government agencies, such as the Commission. In addition, the CDR Package may contain 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 CDR Package is not available to the public and, to the best of DIRECTV's knowledge, has not been disseminated to non-DIRECTV or non-OSC personnel without the execution of a confidentiality agreement. 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.

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

DIRECTV requests that the CDR Package be withheld from public disclosure for at least five years. Release of this information prior to that time would cause substantial competitive harm to DIRECTV and OSC. 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

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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information contained therein. Therefore, DIRECTV's request for ongoing confidential treatment is reasonable.

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For the foregoing reasons, DIRECTV respectfully requests that the CDR Package 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 copies of the CDR Package 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

Enclosures

¹⁸ 47 C.F.R. § 0.459(b)(8).

¹⁹ See OSC Contract at Article 20.1 (Proprietary Information).