



Pillsbury Winthrop Shaw Pittman LLP  
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

Tony Lin  
tel 202.663.8452  
tony.lin@pillsburylaw.com

December 17, 2009

Via Courier

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

Re: 115 License Subsidiary, LLC  
Call Sign S2700  
Submission of Executed Satellite Construction Contract

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 25.164(c), 115 License Subsidiary, LLC (“LicenseSub”) hereby submits a non-redacted copy of the satellite construction contract and accompanying exhibits executed between LicenseSub and Space Systems/Loral, Inc. (“SS/L”) on December 16, 2009.<sup>1</sup> The submitted documents (hereafter “Contractual Documents”) demonstrate that LicenseSub has executed a binding, non-contingent satellite construction contract and, therefore, met its first license milestone.<sup>2</sup> Consistent with Commission policy, LicenseSub is submitting via IBFS a redacted version of the Contractual Documents with a copy of this transmittal

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<sup>1</sup> On December 8, 2009, Pegasus Development DBS Corporation consummated the *pro forma* assignment of the license to LicenseSub. See Letter to Marlene H. Dortch from Tony Lin, File No. SAT-ASG-20090921-00098 (December 8, 2009).

<sup>2</sup> For the Commission’s convenience, the Contractual Documents filed with the Secretary are provided on CD-ROM, and the courtesy copies to Stephen Duall are provided on paper.

letter for the public record<sup>3</sup> and requests confidential treatment of the non-redacted version of this filing, pursuant to the Freedom of Information Act ("FOIA").<sup>4</sup>

The Contractual Documents should be withheld from public inspection and should not be placed in the public files, consistent with Commission policy.<sup>5</sup> The Contractual Documents contain information of which the disclosure would likely cause substantial competitive and financial harm to LicenseSub (and SS/L), and therefore, this information is exempt from mandatory disclosure under FOIA Exemption 4 and the Commission's implementing regulations.<sup>6</sup>

In conformity with Section 0.459(b) of the Commission's rules, LicenseSub submits the following:

- (1) LicenseSub requests confidential treatment of the Contractual Documents.
- (2) The Contractual Documents are being submitted, as required under 47 C.F.R. § 25.164(c), to demonstrate the completion of LicenseSub's first license milestone, the execution of a binding, non-contingent satellite construction contract.
- (3) The Contractual Documents contain highly sensitive commercial and financial information, including details regarding costs, schedules regarding delivery and construction, technical specifications, price and payment terms, unique commercial terms and conditions, and implicit assumptions about LicenseSub's business plans. The documents also include information regarding the distribution of risk and liability, indemnification, intellectual property rights, and other commercial arrangements, which are customarily guarded from competitors and other satellite vendors.

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<sup>3</sup> See *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, at ¶ 187 (2003).

<sup>4</sup> 5 U.S.C. § 552 *et seq.*; 47 C.F.R. §§ 0.457, 0.459.

<sup>5</sup> See *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, at ¶ 187 (2003).

<sup>6</sup> See 5 U.S.C. § 522(b)(4); 47 C.F.R. § 0.457(d); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992); *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

(4) LicenseSub faces potential competition from a number of companies proposing to develop satellites in the same frequency bands, as well as operators currently providing comparable services using other satellite frequency bands. Additionally, other companies provide similar services using other technologies.

(5) Disclosure of the redacted information contained in the Contractual Documents would result in substantial competitive harm to LicenseSub (and SS/L). Competitors could use this information to market services to target LicenseSub's intended customers or to obtain more favorable terms in their negotiations with satellite vendors.<sup>7</sup> Public disclosure would also allow competitors to obtain, at no charge, detailed proprietary technical information regarding system characteristics and performance requirements developed and paid for by LicenseSub.<sup>8</sup> Additionally, public disclosure of the unique terms of the agreement would give satellite vendors an advantage in any future negotiations with LicenseSub.

(6) LicenseSub has taken protective measures to ensure that the redacted information contained in the Contractual Documents is not disclosed to the public. The documents have been provided only to a limited number of employees or agents and are not generally available internally. Further, Article 30 of the contract with SS/L requires that the parties maintain the confidentiality of financial details and proprietary information associated with the contract.

(7) The redacted information contained in the Contractual Documents has not been made available to the public, and there has been no unintended disclosure of this information to third parties. As noted above, the parties are required by the contract to maintain the confidentiality of financial details and proprietary information associated with the contract.

(8) The redacted information contained in the Contractual Documents should be withheld from disclosure for an indefinite period of time. During the operational life of the satellite, satellite vendors and competitors could use the information to their competitive advantage and to LicenseSub's detriment, as

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<sup>7</sup> See, e.g., *In re Application of Mobile Communications Holding, Inc.*, 10 FCC Rcd 1547 (1994) (“[B]uyers receive a clear competitive advantage if they know the prices that other buyers have been charged as a result of individual negotiations.”).

<sup>8</sup> See *In re American Satellite Company*, 1985 FCC LEXIS 3117 (1985) (public disclosure of technical information would result in competitive injury).

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explained above. Moreover, there is no public benefit to be derived from disclosure of the redacted information. In the alternative, LicenseSub requests that the redacted information contained in the Contractual Documents be withheld from disclosure until after the operational life of the satellite.

Please contact the undersigned if you should have any questions regarding this matter.

Very truly yours,



Bruce D. Jacobs

Tony Lin

*Counsel for 115 License Subsidiary, LLC*

Attachment

cc: Stephen Duall (non-redacted version)