

(202) 626-6634

April 5, 2004

Received

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VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

Policy Branch
International Bureau

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APR - 5 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Request for Confidential Treatment**
The Boeing Company
Authority for Use of the 1990-2025/2165-2200 MHz and
Associated Frequency Bands for a Mobile-Satellite System
FCC File Nos. 79-SAT-P/LA-97(16), 90-SAT-AMEND-98(20),
IBFS Nos. SAT-LOA-19970926-00149, SAT-AMD-19980318-00021,
SAT-AMD-20001103-00159, SAT-MOD-20020726-00113,
SAT-MOD-20030711-00128 and SAT-AMD-20030827-00241

Dear Secretary Dortch:

The Boeing Company ("Boeing") respectfully requests that the documents covered by this correspondence be treated as confidential and be withheld from public inspection pursuant to Sections 0.457 and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457, 0.459. In accordance with the requirements of Section 0.459(b), 47 C.F.R. § 0.459(b), Boeing submits the following:

0.459(b)(1): Boeing seeks confidential treatment for the attached (1) letter from Joseph P. Markoski to Marlene H. Dortch, dated April 5, 2004, providing responses to the questions raised by the Commission in its letter dated March 25, 2004 ("CDR Response Letter"), (2) redacted excerpts from the Long Range Business Plan for Boeing Satellite Systems ("BSS LRBP"), (3) a copy of a BSS B&P Authorization, dated May 5, 2003 ("May 5, 2003 Authorization"), (4) a redacted copy of a 2004 NBI Budget Letter, dated March 5, 2004 ("March 5, 2004 Budget Letter"), (5) a redacted copy of a 2004 NBI Budget Letter, dated March 25, 2004 ("March 25, 2004 Budget Letter"), (6) a list of hours worked by BSS employees on the 2 GHz MSS/NEXSYS program during the past five weeks ("Employee List"), and (7) a copy of the North American GEM Schedule, dated July 17, 2003 ("NA GEM Work Schedule").

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0.459(b)(2): Boeing is providing this information, subject to the grant of confidential treatment, in response to a letter of inquiry from the FCC's Satellite Division regarding the above captioned proceeding.¹ The Division's letter specifically requested access to the materials addressed in this request for confidentiality. In addition, the Commission recently indicated in its *License Reform Order* that licensees bear the burden of demonstrating that they have met their CDR milestones by providing evidence that supports a finding of compliance.² All of the materials addressed by this request qualify as such evidence.

0.459(b)(3): Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule contain highly sensitive, confidential, and proprietary commercial and technical information, including trade secrets regarding the construction of spacecraft. Such information "would customarily be guarded from competitors." See 47 C.F.R. § 0.457(d)(2). Furthermore, under the Freedom of Information Act ("FoIA"), "trade secrets and protected commercial or financial information obtained from a person and privileged or confidential" information are protected from disclosure. 5 U.S.C.A. § 552(b)(4).

Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule also contain highly sensitive, confidential and proprietary commercial and financial information regarding Boeing's internal operations, including information regarding the prices, terms and conditions upon which Boeing enters into arrangements with third-party customers. Boeing treats these materials and information as highly confidential and does not disclose this information to third parties. As such, the information qualifies as material that "would customarily be guarded from competitors" under the meaning of Section 0.457(d)(2) of the Commission's rules. In addition, these documents would be protected from disclosure under the FoIA as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C.A. § 552(b)(4).

0.459(b)(4): Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule contain trade secrets and confidential information that are commercially sensitive within the satellite manufacturing industry, both with respect to the sale of satellites to commercial and governmental customers. The satellite manufacturing industry

¹ See Letter from Thomas S. Tycz, Chief, Satellite Division, to Joseph P. Markoski, Squire, Sanders & Dempsey L.L.P. (March 25, 2004).

² See Amendment of the Commission's Space Station Licensing Rules and Policies, Mitigation of Orbital Debris, First Report and Order and Further Notice of Proposed Rulemaking in IB Docket No. 02-34, and First Report and Order in IB Docket No. 02-54, FCC 03-102, 18 FCC Rcd 10760, 10833, ¶ 191 (2003) ("License Reform Order").

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is extremely competitive, with the current global supply of satellite manufacturing capacity greatly exceeding the actual demand for satellite construction services.

Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule also contain confidential commercial and financial information that is commercially sensitive within the satellite manufacturing industry, the aircraft manufacturing industry, the aerospace industry and the government and defense contracting and manufacturing industries. Each of these industries is extremely competitive, with the supply of global manufacturing capacity exceeding current customer demand. Boeing's commercial aircraft sales are subject to intense competition, including foreign companies that are nationally owned or subsidized. Competition has increased further due to the impact of the events of 2001 on the commercial aviation industry.

0.459(b)(5): Boeing Satellite Systems ("BSS"), a wholly owned subsidiary of Boeing, is the world's largest satellite manufacturer. Boeing maintains a competitive edge vis-à-vis other satellite manufacturers by offering customers the benefits of BSS's experience and expert technical design capability. For example, Boeing's 2 GHz MSS satellite is based on the BSS GEO-Mobile spacecraft model, the success of which has been demonstrated by its previous deployment for other geostationary MSS networks. Release of Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule could compromise BSS's competitive edge in the MSS market segment, resulting in substantial harm to BSS and Boeing.

Boeing's March 5, 2004 Budget Letter, March 25, 2004 Budget Letter and Employee List also contain the names of BSS personnel, many of whom are considered to be the leading experts in the satellite design and manufacturing industry. Public disclosure of these names could provide Boeing's competitors with a competitive advantage against Boeing by identifying Boeing personnel that could be the target of their recruitment efforts.

In addition to offering customers superior technical capability, BSS also competes in the highly competitive satellite manufacturing market based on the cost advantages of BSS's economies of scale. Release of the cost and pricing information contained in Boeing's CDR Response Letter, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter and Employee List could compromise BSS's competitive edge in the satellite manufacturing market, resulting in substantial harm to BSS and Boeing.

0.459(b)(6): Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM

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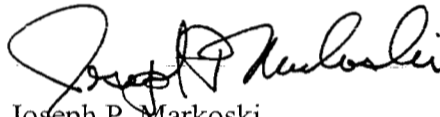
Work Schedule are marked "Boeing Proprietary" and cannot be released to non-Boeing personnel without the execution of a confidentiality agreement.

459(b)(7): Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule are not available to the public and, to the best of Boeing's knowledge, have not been disseminated to non-Boeing personnel without the execution of a confidentiality agreement.

0.459(b)(8): Boeing requests that the Commission permanently withhold the information contained in Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule. Release of this information at any time in the future would cause substantial competitive harm to Boeing.

For the foregoing reasons, Boeing respectfully requests that Boeing's CDR Response Letter, BSS LRBP, May 5, 2003 Authorization, March 5, 2004 Budget Letter, March 25, 2004 Budget Letter, Employee List and NA GEM Work Schedule be granted confidential status and be withheld from public inspection.

Sincerely,



Joseph P. Markoski
Bruce A. Olcott
Counsel for The Boeing Company

cc: Marylou Cahir
Karl Kensinger

Enclosures