

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Pegasus Development Corporation	)	
Submission of Executed Satellite Construction	)	File No. SAT-LOA-20031119-00336
Contract and Request for Confidential Treatment	)	Call Sign: S2603
	)	
Order Adopting Protective Order	)	

PROTECTIVE ORDER

Adopted: September 13, 2005

Released: September 13, 2005

By the Chief, International Bureau:

1. On January 31, 2005, Pegasus Development Corporation and, its wholly owned subsidiary Pegasus Development 107 Corporation (collectively, Pegasus), filed with the Commission an unredacted copy of a satellite construction contract and accompanying exhibits (Contract) executed between itself and Space Systems/Loral, Inc.¹ The cover letter transmitting this contract requested confidential

¹ Pegasus Development Corporation, Submission of Executed Satellite Construction Contract and Request for Confidential Treatment, SAT-LOA-20031119-00336, Call Sign S2603, filed January 31, 2005 (Pegasus Contract). The Pegasus Contract was submitted to the Commission in order to demonstrate the licensee's compliance with its first milestone, execution of a non-contingent construction contract, on its authorization to construct, launch, and operate a Ka-band satellite at the 87° W.L. orbital location. The documents that Pegasus submitted under a request for confidentiality are as follows: (1) Satellite Purchase Contract By and Between Pegasus Development Corporation and Space Systems/Loral, Inc., Terms and Conditions (including (i) Attachment A, (ii) Annex I to Attachment A, (iii) Schedule 1 to Annex I to Attachment A; (iv) Schedule II to Annex I to Attachment A, (v) Attachment B); (2) Exhibit A, Pegasus Development 107 Corporation K-band FSS Satellite, Statement of Work, August 9, 2002; (3) Exhibit B, Attachment 1, Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Specification, August 9, 2002; (4) Exhibit C, Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Program Test Plan, August 9, 2002; (5) Exhibit D, Pegasus Development 107 Corporation, Ka-band FSS Satellites, Program Quality Assurance Plan, August 9, 2002; (6) Exhibit E, Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Program Management Plan, August 9, 2002; (7) Exhibit F, Payment Plan and Termination Liability Amounts, August 9, 2002; (8) Attachment 1, Statement of Work; (8) Attachment 7, Milestone Payment Plan; (9) Attachment 8, Maximum Termination Liability and Letter of Credit Amount Requirements; (10) Attachment 9, Export Laws Compliance Program; (11) Attachment 10, Certification; (12) Attachment 11, Form – Bill of Sale; (13) Attachment 12, Options; (14) Attachment 13, Escrow Agreement: To Be Supplied EDC + 30 Days; (15) Attachment 14, Anomaly Disclosure List; and (16) Attachment 15, Letter of Credit Form. We note that only the redacted copy of the first document listed above is included in the public file and uploaded to the International Bureau Filing System (IBFS). See IBFS File No. SAT-LOA-20031119-00336. The exhibits and attachments listed in this note as number 1 – 16 were not included in the public version of the document. We assume here that Pegasus seeks confidentiality with respect to these documents in their entirety.

(continued...)

treatment of the documents submitted. On July 14, 2005, Highcast Network, Inc. (Highcast) filed, pursuant to the Freedom of Information Act (FOIA),² a request to inspect an unredacted copy of the contract submitted to the Commission by Pegasus.³ Highcast asserts that without disclosure of these documents "it is impossible to assess Pegasus' actual performance" on the satellite construction contract.⁴ On July 22, 2005, Pegasus filed an opposition to Highcast's FOIA request.⁵ Highcast, together with any other individuals or entities that subsequently submit a request to review these documents, are each hereafter referred to as a "Reviewing Party."

2. Pegasus has requested to keep confidential all of the redacted information in the Contract requested by Highcast.⁶ We conclude that requiring Pegasus to disclose the confidential information in the Pegasus Contract Submission to a Reviewing Party pursuant to the terms of a protective order will provide adequate protection to the confidential information included in the documents, without depriving a Reviewing Party of a meaningful opportunity to comment, as required by the Administrative Procedure Act.⁷ Consequently, the International Bureau (Bureau) hereby adopts the attached Protective Order in Appendix A. We require Pegasus to provide a copy of the Pegasus Contract Submission to a Reviewing Party, once that Reviewing Party has executed and delivered the Acknowledgment of Confidentiality that is part of the Protective Order attached to this Order.

3. Accordingly, IT IS ORDERED that Pegasus Development Corporation IS REQUIRED to provide to Highcast Network, Inc. (and any other Reviewing Party that subsequently becomes a party to

(...continued from previous page)

² 5 U.S.C. § 522, *et. seq.*

³ See Freedom of Information Act Request, Highcast Network, Inc., filed by Highcast on July 14, 2005, FOIA 2005-512 (Highcast FOIA Request). Contemporaneously with the issuance of this order, we are granting, in part, and denying, in part, Highcast's FOIA Request.

⁴ See Highcast FOIA Request at 2.

⁵ See Pegasus Development Corporation Opposition to Pegasus Freedom of Information Act Request, filed July 22, 2005 (Pegasus Opposition). Pegasus indicates that Highcast is a corporation controlled by a former employee of Pegasus who is in litigation with Pegasus regarding the termination of his employment. Pegasus argues that Pegasus' construction contract is unrelated to the basis for the employment litigation with its former employee and is not germane to Highcast's business, and that therefore the FOIA request should be dismissed or denied. In its original request for confidentiality, Pegasus argued that disclosure of the redacted information could allow competitors to use the information to market services to target Pegasus' intended customers or to obtain more favorable terms in their negotiations with satellite vendors. See Pegasus Contract Submission. These arguments do not affect our conclusion below that the release of the referenced documents to interested parties, subject to the requirements of the protective order, will provide adequate protection to the confidential information included in the documents, without depriving a Reviewing Party of a meaningful opportunity to comment.

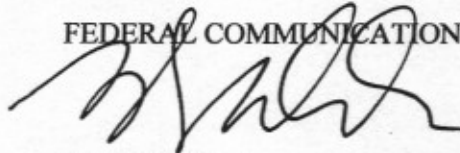
⁶ See Pegasus Opposition.

⁷ Prior to the issuance of the protective order, Pegasus's counsel indicated that Pegasus would object to the review of documents by a particular individual employed by Highcast. We view the issue as premature and not ripe for our review until such individual actually executes and delivers an Acknowledgment of Confidentiality (see Appendix B) to Pegasus and Pegasus timely files an objection with the Commission (see Appendix A, paragraph 8). If an objection is timely filed, at that point in time the Commission will address the merits of the objection. See Appendix A, paragraph 8 (detailing how Confidential Information should be treated during the review of an objection to an Acknowledgment of Confidentiality).

the Protective Order), a copy of the documents submitted to the Commission on January 31, 2005, under the terms of the Protective Order attached to this Order, once Highcast Network, Inc., or any other Reviewing Party, as appropriate, has executed such Protective Order.

4. This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Exception 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION



Donald Abelson
Chief, International Bureau

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APPENDIX A TO PROTECTIVE ORDER

1. *Introduction.* On January 31, 2005, Pegasus Development Corporation and its wholly owned subsidiary Pegasus Development 107 Corporation (collectively, Pegasus) filed with the Commission an unredacted copy of a satellite construction contract and accompanying exhibits (Contract) executed between itself and Space Systems/Loral, Inc.⁸ The cover letter transmitting this Contract requested confidential treatment of the documents submitted. On July 14, 2005, Highcast Network, Inc. (Highcast) filed, pursuant to the Freedom of Information Act (FOIA),⁹ a request to inspect an unredacted

⁸ Pegasus Development Corporation, Submission of Executed Satellite Construction Contract and Request for Confidential Treatment, SAT-LOA-20031119-00336, Call Sign S2603, filed January 31, 2005 (Pegasus Contract). The Pegasus Contract was submitted to the Commission in order to demonstrate the licensee's compliance with its first milestone, execution of a non-contingent construction contract, on its authorization to construct, launch, and operate a Ka-band satellite at the 87° W.L. orbital location. The documents that Pegasus submitted under a request for confidentiality are as follows: (1) Satellite Purchase Contract By and Between Pegasus Development Corporation and Space Systems/Loral, Inc., Terms and Conditions (including (i) Attachment A, (ii) Annex I to Attachment A, (iii) Schedule 1 to Annex I to Attachment A; (iv) Schedule II to Annex I to Attachment A, (v) Attachment B); (2) Exhibit A, Pegasus Development 107 Corporation K-band FSS Satellite, Statement of Work, August 9, 2002; (3) Exhibit B, Attachment 1, Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Specification, August 9, 2002; (4) Exhibit C, Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Program Test Plan, August 9, 2002; (5) Exhibit D, Pegasus Development 107 Corporation, Ka-band FSS Satellites, Program Quality Assurance Plan, August 9, 2002; (6) Exhibit E, Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Program Management Plan, August 9, 2002; (7) Exhibit F, Payment Plan and Termination Liability Amounts, August 9, 2002; (8) Attachment 1, Statement of Work; (8) Attachment 7, Milestone Payment Plan; (9) Attachment 8, Maximum Termination Liability and Letter of Credit Amount Requirements; (10) Attachment 9, Export Laws Compliance Program; (11) Attachment 10, Certification; (12) Attachment 11, Form – Bill of Sale; (13) Attachment 12, Options; (14) Attachment 13, Escrow Agreement: To Be Supplied EDC + 30 Days; (15) Attachment 14, Anomaly Disclosure List; and (16) Attachment 15, Letter of Credit Form. We note that only the redacted copy of the first document listed above is included in the public file and uploaded to the International Bureau Filing System (IBFS). See IBFS File No. SAT-LOA-20031119-00336. The exhibits and attachments listed in this note as number 1 – 16 were not included in the public version of the document. We assume here that Pegasus seeks confidentiality with respect to these documents in their entirety.

⁹ 5 U.S.C. § 522, *et. seq.*

copy of the contract submitted to the Commission by Pegasus.¹⁰ Highcast, together with any other individuals or entities that subsequently submit a request, pursuant to FOIA, to review these documents, are each hereafter referred to as a "Reviewing Party." Consequently, the International Bureau (Bureau) has adopted this Protective Order to ensure that these documents are afforded adequate protection. This Order reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated and is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Confidential Information" means any information contained in the Pegasus Contract Submission or derived therefrom that is not otherwise available from publicly available sources;

"Counsel" means In-House Counsel and Outside Counsel of Record;

"In-House Counsel" means the attorney or attorneys employed by Pegasus or a Reviewing Party or who is employed by an affiliated entity and who are actively engaged in the conduct of this proceeding, *i.e.*, the relevant proceedings, *provided that*, such counsel are not involved in competitive decision-making, *i.e.*, In-House Counsel's activities, association, and relationship with a client are not such as to involve such counsel's advice and participation in any or all of the client's business decisions made in light of similar or corresponding information about a competitor; and

"Outside Counsel of Record" means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing Pegasus or a Reviewing Party.

"Relevant Proceedings" means proceedings that involve: Pegasus' Contract submitted under SAT-LOA-20031119-00336, Call Sign S2603.

3. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for preparation and the conduct of Relevant Proceedings as delineated in this paragraph and paragraphs 5, 10, and 11, and any subsequent judicial proceeding arising directly from these proceedings and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.

4. *Non-Disclosure of Confidential Information.* Except with the prior written consent of Pegasus, or as hereinafter provided under this Protective Order, no Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Confidential Information may be reviewed by Counsel. Subject to the requirements of paragraph 8, Counsel may disclose Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in these proceedings, *provided, that*, the outside consultants or experts are not involved

¹⁰ See Freedom of Information Act Request, Highcast Network, Inc. filed by Highcast on July 14, 2005, FOIA 2005-512 (Highcast FOIA Request).

in the analysis underlying the business decisions of any competitor of Pegasus nor do they participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph 5 assisting Counsel in this proceeding; (3) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with these proceedings, or performing other clerical or ministerial functions with regard to documents connected with these proceedings; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph 5. Individuals who have obtained access to Confidential Information in accordance with the provisions of this paragraph 5 and paragraph 8 may discuss and share the contents of the Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 5 and paragraph 8, and with the Commission and its staff.

6. *Protection of Confidential Information.* Persons described in paragraph 5 shall have the obligation to ensure that access to Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Confidential Information is used only as provided in this Protective Order; and (2) the documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

7. *Prohibited Copying.* If, in the judgment of Pegasus, the documents contain information so sensitive that it should not be copied by anyone, the relevant pages of the documents shall bear the legend "Copying Prohibited," and no copies of such pages, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to Pegasus.

8. *Procedures for Obtaining Access to Confidential Information.* In all cases where access to Confidential Information is permitted pursuant to paragraph 5, before reviewing or having access to any Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (see Appendix B) and file it with the Bureau, on behalf of the Commission, and serve it upon Pegasus so that the Acknowledgment is received by Pegasus at least five business days prior to such person's reviewing such Confidential Information. Where the person seeking access is one described in either clause 3 or 4 of paragraph 5, the Acknowledgment shall be delivered promptly prior to the person obtaining access. Pegasus shall have an opportunity to object to the disclosure of the documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 5, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from Pegasus shall not have access to Confidential Information. Upon receipt of an Acknowledgment and upon there being no objection by Pegasus to the person seeking access, Pegasus shall deliver a copy of the documents to such person.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Filings with the Commission.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this order must be clearly marked: "Confidential Information included pursuant to Protective Order, File No. SAT-LOA-20031119-00336;" and

d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Bureau, and Pegasus. Such confidential portions shall be served under seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Confidential Information shall also file redacted copies of the pleading containing no Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission Staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

11. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Confidential Information.

12. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by Pegasus of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by Pegasus shall not be deemed a waiver of any privilege or entitlement as long as Pegasus takes prompt remedial action.

13. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of the documents or any Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify Pegasus of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that Pegasus has a full opportunity to oppose such production prior to the production or disclosure of the documents or Confidential Information.

14. *Violations of Protective Order.* Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to Pegasus. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this

Protective Order shall limit any other rights and remedies available to Pegasus at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

15. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 5 shall destroy or return to Pegasus the documents and all copies of the same. No material whatsoever derived from may be retained by any person having access thereto, except Counsel (as described in paragraph 5) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared on behalf of that party. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for Pegasus not more than three weeks after conclusion of this proceeding. The provisions of this paragraph 15 regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

APPENDIX B TO PROTECTIVE ORDER**Acknowledgment of Confidentiality**

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 5 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in "competitive decision-making" as that term is used in the definition of In-House Counsel in paragraph 2 of the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Confidential Information is used only as provided in the Protective Order; and (2) the documents are not duplicated except as specifically permitted by the terms of paragraph 10 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at _____ this ____ day of _____, ____.

[Name]

[Position]

[Address]

[Telephone]