

Federal Communications Commission

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

In the Matter of	)	
	)	
Freedom of Information Act Request for Satellite	)	
Construction Contract filed by Pegasus	)	FOIA File No. 2005-512
Development Corporation	)	
	)	
Pegasus Development Corporation and Pegasus	)	IBFS File No. SAT-LOA-20031119-00336
Development Corporation 107 Request for	)	Call Sign: S2603
Confidential Treatment	)	

ERRATUM

Released: September 15, 2005

By the Acting Chief, Satellite Division, International Bureau:

On September 13, 2005, the Commission released an *Order*, DA 05-2450, in the above-captioned proceeding. This Erratum corrects the following:

Footnote 3 to read:

³ Pegasus Development 107 Corporation, Submission of Executed Satellite Construction Contract and Request for Confidential Treatment, SAT-LOA-20031119-00336, Call Sign S2603, filed January 31, 2005 ("Contract" and "Confidentiality Request" respectively). 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; and (7) Exhibit F, Payment Plan and Termination Liability Amounts, August 9, 2002. 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 2 – 7 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. ³

Paragraph 8 to read:

8. Pegasus' Contract contained a number of Attachments and Exhibits.²⁶ The majority of these documents are the epitome of information that is closely held and customarily guarded from competitors, *i.e.*, proprietary technical information. For example, Exhibit B contains the satellite specification,²⁷ Exhibit C contains the test plan,²⁸ and Exhibit D contains the quality assurance plan.²⁹ Each of these documents contains information that is customarily closely held by satellite manufacturers and would be appropriately withheld from the public file in their entirety. Exhibit F, entitled "Payment Plan and Termination Liability Amounts, August 9, 2002," should not have been withheld from the public file in its entirety.

Paragraph 9 to read:

9. Pegasus' failure to submit a redacted version of the one page document entitled, "Exhibit F: Payment Plan and Termination Liability Amounts, August 9, 2002, First Satellite and Satellite Operations Equipment" strains the limits of the confidentiality protection. The payment schedule is a one-page document containing only 21 events (such as "Launch" or "CDR" short for critical design review, and "DELIVERY ON ORBIT"). As such, it appears to be a generic document containing well-known and obvious events in the construction of a satellite. Thus, we do not find the exhibit itself to be *per se* confidential in its entirety. The monetary amounts attached to the progress payments, termination liability, or both, however, would be considered confidential information. Accordingly, with respect to Exhibit F, we find that the information contained in the columns with the following headings is not confidential: (1) Payment Number; (2) Month Number; (3) Nominal Invoice Month; (4) Payment Due; (5) Milestone Event; and (6) Completion Criteria. We do, however, find the information contained in the following columns to be confidential and protected from disclosure: (1) Payment %; (2) 1st Satellite; (3) Sat. Oper. Equip.; (4) Payment Amount; (5) Cum. Payment; and (6) Cum. Term. Liability.

Paragraph 10 will be deleted with subsequent paragraphs renumbered.

New Paragraph 10 to read:

10. We, therefore, conclude that, other than the material that we have just outlined in Exhibit F (columns 1-5), the information subject to the request for confidentiality falls squarely under Exemption 4 to the FOIA rules and meets the requirements of Section 0.459³⁰ and may be withheld from public disclosure.

²⁶ See footnote 3 above.

²⁷ See Exhibit B of the Contract entitled "Attachment 1, Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Specification, August 9, 2002."

²⁸ See Exhibit C of the Contract, entitled "Pegasus Development 107 Corporation, Ka-Band FSS Satellites, Program Test Plan, August 9, 2002."

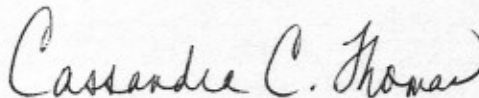
²⁹ See Exhibit D of the Contract, entitled "Pegasus Development 107 Corporation, Ka-band FSS Satellites, Program Quality Assurance Plan, August 9, 2002."

³⁰ 47 C.F.R. § 0.459(c).

New Paragraph 11 to read:

11. IT IS ORDERED that the request for confidentiality submitted by Pegasus on January 31, 2005 is Granted, in part, and Denied, in part to the extent provided herein. Accordingly, we will submit a redacted copy of the "Exhibit F: Payment Plan and Termination Liability Amounts, August 9, 2002," without redacting the information in the following columns, for inclusion in the public file: (1) Payment Number; (2) Month Number; (3) Nominal Invoice Month; (4) Payment Due; (5) Milestone Event; and (6) Completion Criteria.³¹ Submission of the redacted materials to the Commission's public file as indicated here will not be carried out until the time period within which to file application for review has expired or Pegasus' application for review has been fully and finally resolved by the Commission (or any appropriate court of competent jurisdiction), whichever occurs later. Under 0.461(i) of the Commission's rules, 47 C.F.R. § 0.461(i), Pegasus may file an application for review of the Bureau's handling of partial denial of Pegasus's request for confidential treatment. Such an application for review must be filed with the Office of General Counsel within 10 days from the date of this order.

FEDERAL COMMUNICATIONS COMMISSION



Cassandra C. Thomas
Acting Chief, Satellite Division
International Bureau

³¹ Contemporaneously with the issuance of this order, Pegasus will be provided copies of the documents to be submitted into the public file to ensure that there is no confusion regarding the documents, or portions thereof, that are determined not to be confidential.