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**CONFIDENTIAL TREATMENT REQUESTED**

April 21, 2006

**BY HAND DELIVERY**

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

Re: *The DIRECTV Group, Inc.*  
SAT-LOA-20040909-00168 (S2640)  
SAT-LOA-20040909000169 (S2641)

Received  
APR 26 2006  
Policy Branch  
International Bureau  
RECEIVED  
APR 21 2006

Federal Communications Commission  
Office of Secretary

Dear Ms. Dortch:

As requested by the International Bureau,<sup>1</sup> The DIRECTV Group, Inc. ("DIRECTV") hereby submits a non-redacted copy of its contract for construction of the DIRECTV 10 and DIRECTV 11 satellites by Boeing Satellite Systems, Inc. (the "Contract"). 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 redacted portions of the Contract, submitted for the International Bureau's consideration in connection with DIRECTV's demonstration of milestone compliance. This document contains sensitive trade secrets, and commercial and financial information that fall within Exemption 4 of the Freedom of Information Act ("FOIA").<sup>2</sup>

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."<sup>3</sup> DIRECTV

<sup>1</sup> See Letter from Andrea I. Kelly to William M. Wiltshire (April 12, 2006).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> *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 response to a request from the Commission staff; therefore, this information is "confidential" under Exemption 4 of FOIA.<sup>4</sup> Moreover, DIRECTV would suffer substantial competitive harm if the Contract were disclosed.<sup>5</sup>

In support of this request and pursuant to Section 0.459(b) of the Commission's rules,<sup>6</sup> DIRECTV hereby states as follows:

**1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT<sup>7</sup>**

DIRECTV seeks confidential treatment of those portions of the Contract that were redacted from the version publicly filed with the original milestone showing. These portions of the Contract reflect key economic terms and technological attributes of the satellites 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."<sup>8</sup> The parties have extensively negotiated the terms of the Contract, which reflects the design of state-of-the-art satellites and the confidential commercial and financial terms for their procurement.

**2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION<sup>9</sup>**

DIRECTV is submitting the Contract to the Commission in response to a request from the staff for purposes of processing DIRECTV's milestone compliance showing and request for bond reduction.<sup>10</sup> DIRECTV submitted a redacted version of this document with its publicly filed application.

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<sup>4</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>5</sup> See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

<sup>6</sup> 47 C.F.R. § 0.459(b).

<sup>7</sup> 47 C.F.R. § 0.459(b)(1).

<sup>8</sup> *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).

<sup>9</sup> 47 C.F.R. § 0.459(b)(2).

<sup>10</sup> In addition the Commission has indicated that licensees are required to submit non-redacted copies of their satellite construction contracts in order to demonstrate compliance with the contract execution milestone requirement. See *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd. 10760, 10832-33 (2003).

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**3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED<sup>11</sup>**

The Contract contains highly sensitive, confidential, and proprietary commercial and technical information, including trade secrets regarding the construction of satellite spacecraft. The Contract also contains highly sensitive, confidential and proprietary commercial and financial information regarding the prices, terms and conditions upon which DIRECTV and Boeing enter into satellite manufacturing arrangements with customers and suppliers. DIRECTV and Boeing 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."<sup>12</sup> The redacted information contained in the Contract 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 COMPETITION<sup>13</sup>**

Confidential information in the Contract concerns highly competitive markets in which both DIRECTV and Boeing participate. The Contract 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 EchoStar Communications Corporation, and a number of foreign DBS systems have sought or may seek access to U.S. consumers, which will further increase competition to DIRECTV.<sup>14</sup>

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<sup>11</sup> 47 C.F.R. § 0.459(b)(3).

<sup>12</sup> 47 C.F.R. § 0.457.

<sup>13</sup> 47 C.F.R. § 0.459(b)(4).

<sup>14</sup> See, e.g., Petition of DIRECTV Enterprises, LLC for a Rulemaking on the Feasibility of Reduced Orbital Spacing in the U.S. Direct Broadcast Satellite Service (filed Sept. 5, 2003) (discussing the proposed entry of foreign DBS systems into the U.S. MVPD market).

**5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM<sup>15</sup>**

Boeing is a major manufacturer of satellite and aerospace systems. Boeing maintains a competitive edge vis-à-vis other satellite manufactures by offering customers the benefits of Boeing's experience and expert technical design capability. Boeing also competes in the highly competitive satellite manufacturing market based on the cost advantages of Boeing's economies of scale. Release of the technical, cost or pricing information contained in the Contract could compromise Boeing's competitive edge in the satellite manufacturing market, resulting in substantial competitive harm to Boeing. Similarly, this information would enable DIRECTV's competitors to unfairly benefit from the time and resources that DIRECTV has expended in designing and negotiating for construction of its most advanced satellites.

**6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE<sup>16</sup>**

DIRECTV and Boeing do not permit the dissemination of the Contract to non-employees without the execution of a confidentiality agreement. Furthermore, Boeing requires its satellite customers to request confidential treatment as a part of any submission of a satellite construction contract to government agencies, such as the Commission. The Contract must state on every page of every printed copy that "This document contains DIRECTV proprietary information" and "This document contains Boeing proprietary information." In addition, the Contract contains technical data potentially subject to the U.S. Government's International Traffic in Arms Regulations ("ITAR").<sup>17</sup> 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 PARTIES<sup>18</sup>**

The Contract is not available to the public and, to the best of DIRECTV's knowledge, has not been disseminated to non-DIRECTV or non-Boeing personnel without the execution of a confidentiality agreement (except for the redacted version previously submitted to the Commission). Accordingly, DIRECTV requests that the

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<sup>15</sup> 47 C.F.R. § 0.459(b)(5).

<sup>16</sup> 47 C.F.R. § 0.459(b)(6).

<sup>17</sup> See Section 22 C.F.R. § 120.10.

<sup>18</sup> 47 C.F.R. § 0.459(b)(7).



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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 DISCLOSURE<sup>19</sup>**

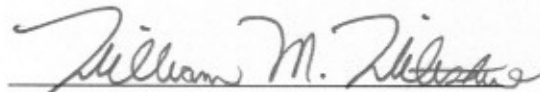
DIRECTV requests that the Contract be permanently withheld from public disclosure. Release of this information at any time in the future would cause substantial competitive harm to DIRECTV and Boeing. This period matches the nondisclosure commitment of the parties to the agreement,<sup>20</sup> which is market evidence of the time period necessary to protect the confidentiality of competitively sensitive proprietary information contained therein. Therefore, DIRECTV's request for confidential treatment for a period of five years is reasonable.

\* \* \*

For the foregoing reasons, DIRECTV respectfully requests that the redacted portions of the Contract 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 non-redacted copies of the Contract be returned to DIRECTV.

If you have any questions, please do not hesitate to contact undersigned counsel.

Respectfully submitted,



William M. Wiltshire  
*Counsel for The DIRECTV Group, Inc.*

Enclosure

cc: Jay Whaley

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<sup>19</sup> 47 C.F.R. § 0.459(b)(8).

<sup>20</sup> See Contract at Article 21 (Proprietary Information) and Section 34.4 (Article 21 survives termination of the Contract).