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Federal Communications Commission
 Office of the Secretary

November 28, 2007

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Marlene H. Dortch
 Secretary
 Federal Communications Commission
 The Portals, Room TW-A325
 445 12th Street, S.W.
 Washington, D.C. 20554

REQUEST FOR CONFIDENTIAL TREATMENT

Re: **Spectrum Five, LLC**
Demonstration of Compliance Contract Milestone
File Nos. SAT-LOI-20050312-00062, SAT-LOI-20050312-00063
Call Signs: S2667 and S2669

Dear Ms. Dortch:

Spectrum Five, LLC (“Spectrum Five”), by its attorneys and pursuant to Sections 0.457 and 0.459 of the Commission’s rules,¹ hereby requests that the attached nonpublic, unredacted satellite construction contract between Spectrum Five and Space Systems/Loral, Inc., including its exhibits, (the “Satellite Contract”) be treated as confidential and not routinely available for public inspection.²

The Satellite Contract, including its exhibits, contains commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act (“FOIA”). See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d). Exemption 4 permits parties to withhold from public information “trade secrets and commercial or financial information obtained from a person and privileged or confidential-categories of materials not routinely available for public inspection.” *Id.* Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government’s ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. See *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), *cert denied*, 507 U.S. 984 (1993).

¹ 47 C.F.R. §§ 0.457 and 0.459.

² Spectrum Five separately has filed a public, redacted version of the Satellite Contract.

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Section 0.457(d)(2) of the Commission's rules allows persons submitting materials that they wish be withheld from public inspection in accordance with 5 U.S.C. § 552(b)(4) to file a request for non-disclosure, pursuant to Section 0.459 of the Commission's rules. In accordance with the requirements contained in Section 0.459(b), for such requests, Spectrum Five hereby submits the following:

(1) *Identification of the specific information for which confidential treatment is sought:* Spectrum Five seeks confidential treatment for the attached Satellite Contract. The Satellite Contract contains commercially sensitive information that includes technical characteristics, pricing and other financial information and construction schedules.

(2) *Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission:* Spectrum Five is submitting this Satellite Contract pursuant to Section 25.148(b)³ of the Commission's rules and the terms of its license.⁴

(3) *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged:* The Satellite Contract contains sensitive commercial, financial and technical information that competitors could use to Spectrum Five's disadvantage. This information includes confidential technical information and financial details. The Satellite Contract provides for the custom design Spectrum Five's two satellites and provides insight into the process for developing the satellites. Spectrum Five would be severely prejudiced in its ability to compete were such information available to its competitors. Moreover, Space Systems/Loral, Inc. would be disadvantaged in future negotiations regarding satellite construction if information about Space Systems/Loral, Inc.'s agreements with Spectrum Five were made available to other potential purchasers of satellites.

(4) *Explanation of the degree to which the information concerns a service that is subject to competition:* The information for which non-disclosure is sought pertains to the Direct Broadcast Satellite service, a service which is has burgeoned in recent

³ 47 C.F.R. § 25.148(b).

⁴ *Spectrum Five, LLC, Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Service (BSS) Spectrum from the 114.5° W.L. Orbital Location*, Order and Authorization, 21 FCC Rcd 14023 (Nov. 29, 2006).

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years. Several Spectrum Five competitors providing Direct Broadcast Satellite services, as well as other services, would stand to benefit from the information contained in the Satellite Contract.

(5) *Explanation of how disclosure of the information could result in substantial competitive harm:* Disclosure of the information in the Satellite Contract could result in substantial harm to Spectrum Five and Space Systems/Loral, Inc. If competitors had access to the information for which Spectrum Five seeks confidential treatment, it could be used as the basis for negotiating their own satellite construction contracts to meet their own milestones, to develop a competing satellite network, and/or to develop competing service offerings. If Spectrum Five's competitors obtained access to this information, they would unfairly benefit from the time and resources that Spectrum Five expended in negotiating the contract and meeting the construction milestone, and could use this information to negotiate more favorable terms in their own construction contracts.

(6) *Identification of any measures taken by the submitting party to prevent unauthorized disclosure:* Spectrum Five has gone to great lengths to ensure that this contract is not disclosed to third parties or otherwise disclosed to unauthorized parties. The Satellite Contract contains provisions requiring both parties to maintain confidentiality of proprietary information, which includes the terms of the contract. The Satellite Contract also details procedures for use of proprietary information by representatives of both Spectrum Five and Space Systems/Loral, Inc., and requires written consent for the release of any proprietary information.

(7) *Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:* The Satellite Contract has not been made available to the public and Spectrum Five has not disclosed the contract to any third parties.

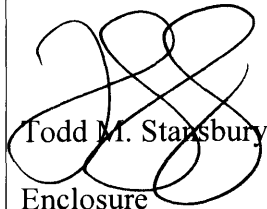
(8) *Justification of the period during which the submitting party asserts that material should not be available for public disclosure:* Spectrum Five requests that the Satellite Contract remain withheld from public inspection indefinitely.

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For the foregoing reasons, Spectrum Five respectfully requests that the information contained in the Satellite Contract be kept confidential and be withheld from public inspection.

Please contact me if you have any questions.

Respectfully submitted,



Todd M. Stansbury
Enclosure