

FOR INTERNAL USE ONLY
NON-PUBLIC

(202) 626-6634

February 27, 2004

VIA ELECTRONIC MAIL
AND HAND DELIVERY

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

RECEIVED

FEB 27 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Received

MAR 2 2004

Federal Communications Commission
Internal Bureau

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. SAT-MOD-20030711-00128 & 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 letter from Joseph P. Markoski to Thomas S. Tycz, dated February 27, 2004, providing responses to the questions raised by the Commission in its letter dated February 11, 2004 and the four attachments to the letter.

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.

0.459(b)(3): Boeing's letter and attachments contain highly sensitive, confidential, and proprietary commercial and technical information, including trade secrets regarding the

¹ See Letter from Thomas S. Tycz, Chief, Satellite Division, to Joseph Markoski, Squire, Sanders & Dempsey L.L.P. (Feb. 11, 2004).

FOR INTERNAL USE ONLY
NON-PUBLIC

February 27, 2004

construction of satellite 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 is protected from disclosure. 5 U.S.C.A. § 552(b)(4).

0.459(b)(4): Boeing’s letter and attachments contain trade secrets and confidential information that is commercially sensitive within the satellite manufacturing industry, both with respect to the sale of satellites to commercial and governmental customers. The satellite manufacturing industry is extremely competitive, with the current global supply of satellite manufacturing capacity greatly exceeding the demand for satellite construction services.

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 the information contained in Boeing’s letter and attachments could compromise BSS’s competitive edge in the MSS market segment, resulting in substantial harm to BSS and Boeing.

0.459(b)(6): Boeing does not permit the dissemination of the information contained in Boeing’s letter and attachments to non-Boeing personnel without the execution of a confidentiality agreement. Three of the attachments to Boeing’s letter were extracted from the Critical Design Review (“CDR”) for Boeing’s 2 GHz MSS spacecraft. Boeing requires that any copy of a Boeing CDR, including excerpts from CDRs, must state on every page of every printed copy that the material is “BOEING PROPRIETARY.” In addition, all excerpts from a Boeing CDR must be accompanied by a statement that the document contains technical data as defined in the U.S. Government’s International Traffic in Arms Regulations (“ITAR”). *See* Section 22 C.F.R. § 120.10. As such, its dissemination to non-U.S. citizens or companies without prior approval may be a violation of federal law.

0.459(b)(7): The information contained in Boeing’s letter and attachments 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.

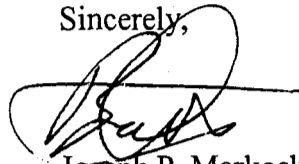
0.459(b)(8): Boeing requests that the Commission permanently withhold the information contained in Boeing’s letter and attachments. Release of this information at any time in the future would cause substantial competitive harm to Boeing.

Marlene H. Dortch
Page 3

February 27, 2004

For the foregoing reasons, Boeing respectfully requests that Boeing's letter and attachments be granted confidential status and be withheld from public inspection. Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Markoski', written over a horizontal line.

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

cc: Marylou Cahir
Thomas Tycz
Karl Kensinger
Robert Nelson
John Martin
William Bell
Sankar Persaud

Enclosures