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Wiley Rein & Fielding LLP

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1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

August 20, 2004

Policy Branch
International Bureau

Jennifer D Hindin
202.719.4975
jhindin@wrf.com

RECEIVED

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Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Re: *Intelsat LLC Request for Confidential Treatment,*
File No. SAT-MOD-20040730-00152

www.wrf.com

Dear Ms. Dortch:

By its attorneys, Intelsat LLC ("Intelsat") respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 & 0.459, the Commission withhold from public inspection and accord confidential treatment to an agreement regarding INTELSAT 706, which has been hand-delivered to Jabin Vahora of the International Bureau. This agreement 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).

Section 0.457(d)(2) allows persons submitting materials that they wish be withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure, pursuant to Section 0.459. In accordance with the requirements contained in Section 0.459(b), for such requests, Intelsat hereby submits the following:

(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)).* Intelsat seeks confidential treatment for the enclosed agreement between Intelsat and Turksat Uydu Haberlesme ve Isletme A.S. ("Turksat A.S."). This agreement relates to Intelsat's operation of the INTELSAT 706 satellite at the nominal 50° E.L. orbital location. The ITU filing for the 50°

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E.L. orbital slot is held by the Government of Turkey and the orbital slot is currently licensed to Turksat A.S. The agreement contains commercially sensitive information that falls within Exemption 4 of FOIA.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*: Intelsat submits this agreement at the request of the Commission and in connection with its pending application to modify the license for the INTELSAT 706 satellite to allow its operation at 50.25° E.L. See File No. SAT-MOD-20040730-00152.

(3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or Is Privileged (Section 0.459(b)(3))*: The agreement contains sensitive commercial and financial information that competitors could use to Intelsat's disadvantage. The courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings. See *Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980). The Commission has broadly defined commercial information, stating that "[c]ommercial" is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

The agreement with Turksat A.S. contains information and technical information regarding INTELSAT 706 and its operation at 50.25° E.L. The information contained in this agreement meets both definitions of "confidential." First, a decision not to treat this information as confidential could affect the Commission's ability to obtain necessary information in the future. Second, disclosure of this information likely will cause substantial harm to the competitive positions of Intelsat and Turksat A.S.

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4))*: Substantial competition exists in the telecommunications satellite industry. Other large players in the geo-stationary satellite service market include PanAmSat and SES Americom. The presence of these large competitors makes imperative the confidential treatment of sensitive commercial information.

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(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*: Release of the agreement could have a significant impact on Intelsat's commercial operations. If business partners/customers or competitors had access to this information, it could negatively affect Intelsat's future negotiations with potential and existing business partners/customers. Specifically, business partners/customers could use the information gleaned from the agreement to negotiate more favorable terms in their own service or capacity agreements. Competitors could use this information to better compete against Intelsat. Thus, it is "virtually axiomatic" that the information qualifies for withholding under Exemption 4 of FOIA, *see National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir., 1976), and under Sections 0.457(d)(2) and 0.459(b).

(6) *Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*: Intelsat has gone to great lengths to ensure that this agreement is not disclosed to third parties or otherwise disclosed to unauthorized parties. Moreover, the agreement contains a provision that deems the information in the agreement confidential and proprietary and restricts disclosure. More specifically, the agreement prohibits disclosure without written consent except in limited circumstances.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))*: Intelsat has not made this agreement available to the public and has not disclosed this agreement to any third parties.

(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8))*: Intelsat respectfully requests that the Commission withhold this agreement from public inspection for indefinitely. On balance, the need to protect Intelsat from competitive harm as a result of disclosure of this agreement outweighs any benefit of public disclosure which, in the ordinary course of business, would not otherwise occur.

Accordingly, for the foregoing reasons, Intelsat respectfully requests that the information contained in its agreement with Turksat A.S. be kept confidential and be withheld from public inspection at all times.

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Please contact the undersigned with any questions. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer D. Hindin".

Jennifer D. Hindin

Counsel for Intelsat LLC

cc: Karl Kensinger
Tom Tycz
Cassandra Thomas
Fern Jarmulnek
Jabin Vahora