



LEVENTHAL SENTER & LERMAN PLLC

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RAUL R. RODRIGUEZ
(202) 416-6760

E-MAIL
RRODRIGUEZ@LSL-LAW.COM

CONFIDENTIALITY REQUEST PURSUANT TO 47 C.F.R. § 0.459

BY HAND DELIVERY

Mr. Robert Nelson
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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APR 19 2006

Federal Communication Commission
Bureau / Office

Received
APR 26 2006
Policy Branch
International Bureau

Re: Hughes Communications, Inc.'s Demonstration of Compliance with Satellite Implementation Milestones for Its Ka-Band FSS Satellite at 95° W.L. (Call Sign S2663; FCC File Nos. SAT-LOA-20050214-00038, SAT-MOD-20050523-00106, and SAT-AMD-20060306-00025)

Dear Mr. Nelson:

Hughes Communications, Inc. ("Hughes"), by counsel, hereby requests that the documents being submitted herewith in connection with its Demonstration of Compliance with Satellite Implementation Milestones for the above-referenced facility be held in confidence and not made available for public inspection pursuant to Section 0.459 of the Commission's rules. Confidential treatment in this circumstance is fully consistent with the Administrative Procedure Act and past Commission practice.

Hughes is submitting under cover of this request a complete copy of the fully-executed, non-contingent agreement, and all amendments thereto (collectively, the "Agreement"), between Hughes and Boeing Satellite Systems International, Inc. ("Boeing"),¹ which details the work performed thereunder. Due to the voluminous nature of these documents, they are being submitted in electronic format only and without any redaction of sensitive data. Also included, and subject to this request, is a copy of a certification letter from Boeing detailing the progress toward completion of construction of the spacecraft, a Declaration of Hughes Network Systems, LLC, and the Bill of Sale and Assignment and Assumption Agreement and photographs of

¹ As explained fully in the Milestone Compliance Demonstration itself, at the time that the contract was executed, Boeing was called Hughes Space and Communications International, Inc. ("HSCI") and both parties to the Agreement were subsidiaries of Hughes Electronics Corporation. Subsequently, HSCI was sold to The Boeing Corporation and was renamed.



SPACEWAY 3 under construction. Confidential treatment of these documents is appropriate under Exemption 4 of the Freedom of Information Act ("FOIA"), which applies to information constituting "trade secrets and commercial or financial information" that "would not customarily be released to the public." See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

In support of this request, Hughes provides the following information, as required under Section 0.459(b) of the Commission's Rules –

1. Specific Information For Which Confidential Treatment Is Sought -

§ 0.459(b)(1): Hughes seeks confidential treatment for the satellite construction contract between it and Boeing (the Agreement), as well as related documents which contain specific technical characteristics of the satellite, as well as the financial terms agreed to by the parties. This includes an April 10, 2006 letter from Boeing to Hughes detailing the progress of construction of the satellite and including information concerning the current and total amounts to be paid under the Agreement, as well as a Declaration, dated April 12, 2006, of Hughes Network Systems, LLC regarding the progress of the construction of the satellite and a Bill of Sale and Assignment and Assumption Agreement.

2. Circumstances Giving Rise To The Submission - § 0.459(b)(2):

Submission of information sufficient to demonstrate Hughes' compliance with the milestone conditions of its satellite license is necessary at this time pursuant to paragraph two of Hughes authorization and Section 25.164(c) of the Commission's Rules. In particular, the rule states that all satellite licensees whose authorizations were granted on or after September 11, 2003 are "required to submit a copy of their binding non-contingent contract with the Commission on or before the date" established in the licensees space station authorization. 47 C.F.R. § 25.164(c). Hughes' authorization, in turn, states that this initial implementation milestone must be satisfied no later than April 19, 2006. Failure to comply with this requirement would result in the license becoming automatically null and void. See SkyTerra Communications, Inc. SAT-LOA-20050214-00038, Grant Stamp, April 19, 2005, at ¶ 2.²

3. Degree To Which The Information Is Commercial Or Financial, Or Contains A

Trade Secret Or Is Privileged - § 0.459(b)(3): The Agreement and the other documents for which Hughes is requesting confidential treatment contains commercially sensitive information "which would customarily be guarded from competitors."³ This information includes, but is not

² See also Public Notice, DA 05-1130 (rel. April 22, 2005). Pursuant to an August 2005 application for *pro forma* assignment of license, the license of SkyTerra Communications, Inc. was assigned to SkyTerra Holdings, Inc. See File No. SAT-ASG-20050826-00168. In December 2005, SkyTerra Holdings, Inc. informed the Commission that its name had changed to Hughes Communications, Inc. See Letter dated December 20, 2005, from counsel for Hughes and SkyTerra to the Secretary of the Commission, File No. SAT-ASG-20050826-00168. In this submission, references to "Hughes" shall include Hughes Communications, Inc. and, as applicable, its predecessors in interest with respect to the 95W License Grant, SkyTerra Communications, Inc. and SkyTerra Holdings, Inc.

³ James A. Kay, Jr., 17 FCC Rcd 1834 (2002) (withholding such information from public inspection).



limited to, specific confidential terms, including payload design characteristics and operational and financial details. These terms reflect arrangements between these parties the disclosure of which would not only be competitively harmful if disclosed to competitors, but could also adversely impact future negotiations between Hughes and Boeing, as well as between both Hughes and Boeing and their potential contractors or customers. Disclosure of these terms would therefore be damaging to both companies. Accordingly, public disclosure of the confidential terms of these documents could materially impair the Agreement.

4. Degree To Which The Information Concerns A Service That Is Subject To Competition - § 0.459(b)(4): As the Commission is aware, there is substantial competition in the satellite industry among both service providers and systems manufacturers. The commercial provision of Ka-band FSS is a relatively new segment of the industry, and Hughes believes one that will continue to attract competitive offerings.

5. How Disclosure Of The Information Could Result In Substantial Competitive Harm - § 0.459(b)(5): Information about both the status and content of the operational arrangements between Hughes and Boeing reflected in the attached Agreement and the other documents could be misused by potential competitors to gain commercially exploitable knowledge of the company's technical arrangements for Ka-band FSS, thereby allowing them to reap unfair advantages in formulating their own plans, pursuing technical development of competing systems, and/or negotiating their own satellite construction arrangements. Because Ka-band FSS services are emerging in the marketplace, now is a particularly critical time for Hughes to protect its plans from disclosure. Release of the details of this project to potential competitors would allow others to benefit from plans and information that Hughes has spent considerable time and money developing, and to adapt their own plans based on Hughes's approach.

6. Measures Taken By Hughes To Prevent Unauthorized Disclosure - § 0.459(b)(6): Under Article 9 of the Agreement between Hughes and Boeing, the parties specifically agree to strict limitations on use and disclosure of the proprietary information. In accordance with these contract provisions, Hughes has limited access to the information solely to those officers, directors, employees, contractors and consultants who require knowledge of the Agreement's terms in order to perform their duties and fulfill the company's obligations under the Agreement. Any other disclosure not compelled by law requires prior written consent of the other party. The Agreement itself, the assignment letter, the HNS declaration and the related certification letter are, or contain, proprietary information under the terms of the Agreement.

7. The Information Submitted Is Not Available To The Public and Has Not Previously Been Disclosed To Third Parties, Except For Appropriately Limited Circumstances - § 0.459(b)(7): No part of the Agreement between Hughes and Boeing has been publicly disclosed. As set forth in the Agreement, disclosure has been limited by the parties "to those officers, directors and employees within the receiving party's organization who reasonably



require access” under the Agreement, as well as to any contractors and consultants of the parties pursuant to the confidentiality provisions of the Agreement. *See* Agreement at §§ 9.8 & 9.9.

8. *Period During Which The Submitted Material Should Not Be Available For Public Disclosure - § 0.459(b)(8):* Hughes respectfully requests that the confidential information attached hereto be kept confidential indefinitely. Under the Agreement, the parties are required to protect all proprietary information throughout the term of the Agreement, and to return or destroy such information upon termination of the Agreement. *See* Agreement at § 9.10. Accordingly, Hughes requests that the Commission maintain confidential treatment of the Agreement and related documents until it notifies the Commission that confidential treatment is no longer required.

9. *Other Information Supporting Request For Confidential Treatment - § 0.459(b)(9):* The Commission has long recognized that satellite space segment construction contracts contain competitively sensitive information.⁴ The Commission has therefore adhered to a policy of declining to disclose such contracts “on the mere chance” that such disclosure might be helpful to a third party in some fashion, and has typically required a showing prior to disclosure that the information provides “a necessary link in a chain of evidence” that will resolve an open issue before the Commission.⁵ These policies and practices apply fully to the Agreement and related documents being provided by Hughes.

* * * * *

⁴ *See Amendment of Space Station Licensing Rules and Policies*, 18 FCC Rcd 10760, ¶ 187 (2003).

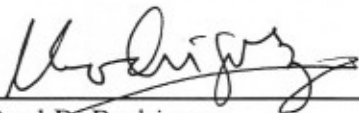
⁵ *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 8 (1998).



For all of the foregoing reasons, Hughes requests that the Commission withhold the attached documents from public inspection, according them fully confidential treatment. In the event that a request for examination of these documents are filed, Hughes requests an opportunity to respond and to provide redacted versions of the documents submitted herewith, in lieu of full disclosure, and to enter into an appropriate protective order covering any party seeking review.

Respectfully submitted,

HUGHES COMMUNICATIONS, INC.

By: 

Raul R. Rodriguez
Stephen D. Baruch
David S. Keir

Leventhal, Senter & Lerman PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006
(202) 429-8970

Its Attorneys

ATTACHMENTS
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REQUEST FOR
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