

WILLKIE FARR & GALLAGHER LLP

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Washington, DC 20006-1238
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April 28, 2006

Via Hand Delivery

S2357 SAT-MOD-20060306-00024 IB200600059
Loral Skynet Corporation
TELSTAR 11N

Ms. Andrea Kelly
International Bureau
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

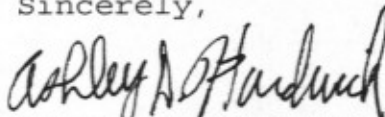
Re: Loral Orion, Inc.
First Milestone Manufacturing Contract
Call Sign S2357 (Telstar 11N)

Dear Ms. Kelly

Please find attached, pursuant to your request, a confidential full version copy of the above-referenced contract. It should be noted that this will be the third copy that Loral has submitted to the Commission.

If there is a need for further information, I may be reached at (202)303-1167.

Sincerely,


Ashley D. Hardwick
Legal Assistant

cc: Karen Henein (w/o attachment)
Attachment

WILLKIE FARR & GALLAGHER LLP

WF&G
STAMP IN

1875 K Street, NW
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REQUEST FOR CONFIDENTIAL TREATMENT

September 28, 2005

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW TW-A325
Washington, DC 20554

RECEIVED

SEP 28 2005

Federal Communications Commission
Office of Secretary

Re: Loral Orion, Inc. (Debtor in Possession)
First Milestone Manufacturing Contract Submission
Call Sign: S2357 (Telstar 11N)

Dear Ms. Dortch:

Pursuant to the Commission's rules, Loral Orion, Inc. (Debtor in Possession) ("Loral Orion") hereby submits a binding, non-contingent satellite manufacturing contract and accompanying exhibits executed between Loral Orion and Space Systems/Loral, Inc. (Debtor in Possession) ("SS/L") for Telstar 11N, to be located at 37.55° W.L.¹ Loral Orion submits two versions of the satellite manufacturing contract: a redacted version for public inspection and an unredacted version that is confidential, subject to this request for confidential treatment.

Consistent with Commission policy, Loral Orion requests confidential treatment of the unredacted copy of the satellite manufacturing contract. The unredacted satellite manufacturing contract contains highly sensitive commercial and financial information, including details regarding amounts due, payment terms and schedules, financial and performance incentives, technical specifications, and unique commercial terms and conditions. The disclosure of this information likely would cause

¹ Telstar 11N was previously referred to as Telstar 11R. While the T11 satellite was originally launched into 37.5° W.L., pursuant to a March 2005 coordination agreement with SES Americom, Inc., the satellite is operated at 37.55° W.L. A modification to the license to reflect this relocation was granted on May 6, 2005. *Policy Branch Information Actions Taken, International Bureau, 20 FCC Rcd 8839 (2005)*. A modification to the Telstar 11N authorization will be sought to permit continued operation at this revised orbital location.

substantial financial and competitive harm to Loral Orion and SS/L, and is therefore exempted from mandatory disclosure under Exemption 4 of the Freedom of Information Act ("FOIA")² and section 0.457(d) of the Commission's rules.³ The unredacted satellite manufacturing contract should be withheld from public inspection and should not be placed in the public file.

In support of its request for confidential treatment and pursuant to the requirements of section 0.459(b) of the Commission's rules,⁴ Loral Orion states the following:

1. Loral Orion seeks confidential treatment of the unredacted copy of its satellite manufacturing contract, including related exhibits, with SS/L. The unredacted contract and its exhibits contain trade secrets, unique and negotiated commercial terms and conditions, technical specifications, payment terms and schedules, and financial and performance incentives. This information has been redacted from the version of the contract that is available for public inspection. In addition to portions of the contract, exhibits A through E have been omitted from the public inspection copy.
2. The satellite contract is submitted pursuant to section 25.164(c) of the Commission's rules, which requires a satellite licensee to submit a copy of its manufacturing contract with the Commission on or before the deadline for entering into such a contract.⁵
3. The satellite manufacturing contract contains trade secrets, unique and negotiated commercial terms and conditions, technical specifications, payment terms and schedules, financial and performance incentives, and other commercial, financial and technical information that is customarily guarded from competitors.⁶ This information is exempt from disclosure under FOIA Exemption 4⁷ and section 0.457(d) of the Commission's rules.⁸ The satellite manufacturing contract details unique financial and commercial terms and conditions that have been negotiated extensively by the parties. It also details the negotiated satellite construction schedule, including exhibits A through E, which provide technical specifications for construction, testing, and deployment of a sophisticated, unique GSO FSS satellite. Thus, this information in the satellite manufacturing contract qualifies as a trade secret, which is defined as "a 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

² 5 USC § 552(b)(4). See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

³ 47 CFR § 0.457(d).

⁴ 47 CFR § 0.459(b).

⁵ 47 C.F.R. § 25.164(c). In addition, the Commission required submission of the satellite manufacturing contract when it granted a November 29, 2001 modification request on September 28, 2004. *Policy Branch Information Actions Taken, International Bureau*, 20 FCC Rcd 960 (2004).

⁶ 47 CFR § 0.457(d)(2).

⁷ 5 USC § 552(b)(4).

⁸ 47 CFR § 0.457(d).

the end product of either innovation or substantial effort.”⁹ Neither Loral Orion nor SS/L customarily discloses any of the information redacted or omitted from the satellite manufacturing contract to competitors or to the public. Therefore, all of the aforementioned information is exempt from disclosure.

4. Loral Orion faces competition from a substantial number of companies involved in or developing Ku-band satellite systems, along with other companies currently providing comparable services using other satellite frequencies. These competitors include, but are not limited to, PanAmSat Corp., Intelsat, SES Americom, Inc., and New Skies Satellites.
5. Disclosure of the aforementioned trade secrets, unique and negotiated commercial terms and conditions, technical specifications, payment terms and schedules, financial and performance incentives, and other commercial, financial and technical information that would customarily be guarded from competitors likely would result in substantial competitive harm to both Loral Orion and SS/L. Release of this information would provide Loral Orion’s competitors with commercial information developed by Loral Orion and SS/L. The contract and its exhibits contain detailed descriptions of the satellite’s performance requirements and provide a roadmap of Loral Orion and SS/L’s satellite construction. Release of that information would provide competitors with valuable proprietary information at no expense, allowing competitors to imitate or build on Loral Orion and SS/L’s innovations without expending funds for their own research and development. Competitors could use the information disclosed to develop a competitive marketing strategy likely to cause harm to Loral Orion and SS/L. Furthermore, disclosure of financial information contained in the contract would provide competitors with valuable insight as to how Loral Orion and SS/L structure and price satellite programs. Disclosure likely would cause SS/L to be disadvantaged in competing for future contract procurements by allowing competitors and potential customers to better estimate and undercut SS/L’s bids. Indeed, release of redacted and omitted portions of the satellite manufacturing contract would provide competitors with a “model contract” to use when soliciting SS/L’s clients. It could also be used to provide other satellite manufacturers with key contractual provisions that they can use in tailoring competitive strategies, adversely affecting Loral Orion and SS/L’s future negotiating postures.
6. Article 28 of the satellite manufacturing contract contains specific provisions requiring both parties to maintain the confidentiality of proprietary information included in the contract and disclosed orally during discussions connected with the contract.
7. Neither Loral Orion nor SS/L customarily discloses the information redacted or omitted from the satellite manufacturing contract to competitors or to the public.
8. Loral Orion requests that the unredacted copy of the satellite manufacturing contract and exhibits be considered confidential indefinitely or for ten years as consistent with Article 28 of the satellite manufacturing contract. Premature disclosure of the redacted and omitted

⁹ See *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (citation omitted).

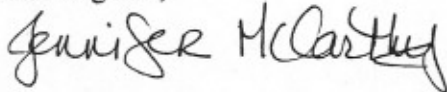
information would unfairly advantage other satellite operators and damage Loral Orion's competitive position.

9. Using the *National Parks* test, commercial, technical, or financial data is kept confidential if its disclosure would 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.¹⁰ The Commission has previously determined that the financial and technical data contained in a satellite manufacturing contract are considered confidential under the second prong of the *National Parks* test.¹¹ Disclosure of this information would cause the satellite operator to "lose its competitive edge."¹² Loral Orion's satellite manufacturing contract contains just such proprietary and confidential financial and technical information. Disclosure would cause substantial competitive injury.

To provide appropriate protection from public disclosure, the Commission should strictly limit distribution of the unredacted copy of Loral Orion's satellite contract within the agency. Should any person outside the Commission request disclosure of the unredacted copy, Loral Orion requests to be notified immediately in order to oppose such request or take other actions as deemed necessary.¹³

Please contact the undersigned with any questions regarding this submission.

Kind regards,



Philip L. Verveer

Jennifer D. McCarthy

Karen Henein*

Counsel to Loral Orion, Inc. (Debtor in Possession)

Enclosures

cc: Andrea Kelly w/ enclosures (confidential version)

* Admitted only to the Maryland Bar. Practicing under the supervision of members of the D.C. Bar.

¹⁰ *National Parks and Conservation Association v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

¹¹ *See American Satellite Company; Request for Inspection of Rainbow Satellite, Inc. Documents*, Memorandum Opinion and Order, 1985 FCC LEXIS 3117 at ¶ 17 (1985).

¹² *Id.*

¹³ Please note that although the final page is not numbered in sequence, the contract as submitted is complete as agreed to and executed by both parties.