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OCT 19 2006

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October 19, 2006

BY HAND DELIVERY

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

**Re: REDACTED – FOR PUBLIC INSPECTION
PanAmSat Licensee Corp. Request for Confidential Treatment,
File No. SAT-MOD-20061018-00123**

Dear Ms. Dortch:

By its attorneys, PanAmSat Licensee Corp. (“PanAmSat”) respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment to an amendment to an agreement regarding PAS-9 (commercially known as PAS-5), which is being filed in both redacted and un-redacted form with a copy of this letter. 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, PanAmSat hereby submits the following:

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(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*. PanAmSat seeks confidential treatment for the enclosed Amendment #2 to the February 14, 2002 agreement between PanAmSat Corporation (now known as Intelsat Corporation) and Arab Satellite Communications Organization (“ARABSAT”).¹ This amendment relates to PanAmSat’s continued operation of the PAS-9 satellite at the 26.15° E.L. orbital location through September 30, 2008. PanAmSat is currently authorized by the FCC to operate PAS-9 at this location until January 2, 2007.² The ITU filings for this orbital slot are held by ARABSAT and the government of Saudi Arabia, as the coordinating administration for the ARABSAT system, has coordinated use of the C-band frequencies utilized by PAS-9 at that orbital location.³ PanAmSat has coordinated the satellite’s TT&C frequencies with all satellite operators within five degrees of the location.⁴ The amendment contains commercially sensitive information that falls within Exemption 4 of FOIA.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*: PanAmSat submits this agreement in connection with its application to modify the license for the PAS-9 satellite because the Commission has in the past required an applicant to submit the underlying commercial agreement when it deploys a satellite to a non-U.S. location. As noted above, PanAmSat seeks to continue to operate the PAS-9 satellite at 26.15° E.L., an ARABSAT location.

(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 amendment contains sensitive commercial and financial information that competitors could use to PanAmSat’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

¹ Amendment #1 to the agreement addressed a change in beam pointing and was previously submitted to the FCC, as was the February 14, 2002 agreement, under a request for confidential treatment.

² See *PanAmSat Licensee Corp. Application for Modification of License for the PAS-9 Satellite*, Order and Authorization, 19 FCC Rcd 16,642 (2004).

³ *Id.*, 19 FCC Rcd at 16,644 (¶5).

⁴ *Id.*

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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 amendment to the agreement with ARABSAT contains financial information regarding the continued operation of PAS-9 at 26.15° 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 PanAmSat and ARABSAT.

(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 geostationary satellite service market include Eutelsat and SES Americom. The presence of these large competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*: Release of the amendment could have a significant impact on PanAmSat's commercial operations. If business partners/customers or competitors had access to this information, it could negatively affect PanAmSat'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 PanAmSat. 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))*: None of this information is provided to the public, and PanAmSat does not provide this information to third parties except pursuant to agreements to maintain confidentiality.

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(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))*: PanAmSat 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))*: PanAmSat respectfully requests that the Commission withhold this agreement from public inspection indefinitely. On balance, the need to protect PanAmSat 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, PanAmSat respectfully requests that the information contained in its amendment to its agreement with ARABSAT be kept confidential and be withheld from public inspection at all times.

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

Sincerely,



Carl R. Frank
Chin Kyung Yoo
Counsel for PanAmSat Licensee Corp.

cc: Robert Nelson
Karl Kensinger
Cassandra Thomas
Fern Jarmulnek
Jabin Vahora

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REDACTED - FOR PUBLIC INSPECTION

AMENDMENT #2

REDACTED - FOR PUBLIC INSPECTION

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Each of the parties have duly executed and delivered this Amendment as of the day and year first written above.

ARAB SATELLITE COMMUNICATIONS ORGANIZATION (ARABSAT)

By: Khalid A. Balkheyour

~~.....~~ 7 Jan 5, 06
Title: President and CEO

PANAMSAT CORPORATION

By:

Name:

Title:

and

By:

Name:

Title:

Michael Antonovich
MICHAEL ANTONOVICH
EVP, GLOBAL SALES & MARKETING
Michael J. Ingese
Michael J. Ingese
Executive Vice President &
Chief Financial Officer

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