

FILED/ACCEPTED

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

AUG 16 2010

Federal Communications Commission
Office of the Secretary

In the Matter of)

ViaSat, Inc.)

FOR INTERNAL USE ONLY
NON-PUBLIC

) FCC File No. SAT-LOA-20070314-00051,
) SAT-MOD-20080718-00144, SAT-AMD-
) 20081203-00220, SAT-MOD-20091127-00129

) Call Sign: S2737
)

REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 & 0.459, ViaSat, Inc. ("ViaSat") respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to the enclosed, unredacted versions of Amendment No. 2, dated January 22, 2010, and Amendment No. 3, dated May 17, 2010 (together, the "Amendments") to the "Contract between ViaSat, Inc. and Space Systems/Loral, Inc. for the ViaSat '77' Satellite Program," ("Contract"). The Contract relates to the construction of a Commission-authorized satellite that will operate at the 77.3° W.L. orbital location and provide fixed satellite service ("FSS") using Ka-band frequencies (the "Satellite"). ViaSat has separately filed today with the Commission redacted versions of the Amendments, from which the confidential portions have been removed. Those redacted versions are available for public inspection.

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In support of this request and pursuant to Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), ViaSat provides the following information:

1. **Identification of the Specific Information for Which Confidential Treatment Is Sought (47 C.F.R. § 0.459(b)(1)).** ViaSat respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the enclosed unredacted versions of the Amendments in their entirety ("Confidential Information").
2. **Description of Circumstances Giving Rise To the Submission (47 C.F.R. § 459(b)(2)).** The Confidential Material is being filed voluntarily to supplement the records of the above-captioned satellite license files.
3. **Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (47 C.F.R. § 0.459(b)(3)).** The Confidential Material contains sensitive commercial and financial information "which would customarily be guarded from competitors," including without limitation (i) descriptions of technical work programs; (ii) disclosures of business plans; (iii) financial terms and conditions; and (iv) pricing and financial nonperformance penalties. As explained below, public disclosure of this information would place ViaSat at a competitive disadvantage vis-à-vis its competitors, and damage ViaSat's position in the marketplace. Notably, the Commission has recognized that spacecraft construction agreements, to which the Amendments pertain, contain competitively sensitive information, and need to be protected. *See, e.g., GE American Communications*, 16 FCC Rcd 6731 (2001).

4. **Explanation of the Degree to Which the Information Concerns a Service That Is Subject to Competition (47 C.F.R. § 0.459(b)(4)).** The Confidential Material, concerns the design, development, and construction of the Satellite – which will support, among other things, broadband satellite service offerings – as well as the financial terms and conditions relating to the construction of the Satellite. These satellite offerings are subject to competition from other existing and potential broadband satellite service offerings, as well as the existing and potential terrestrial broadband offerings, such as those provided by cable and DSL operators.

5. **Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (47 C.F.R. § 0.459(b)(5)).** As noted above, a number of operators compete, or potentially compete, with ViaSat. If ViaSat’s competitors were to obtain access to the Confidential Material, they would unfairly benefit from the time and resources that ViaSat has expended in designing the Satellite and negotiating the Contract and the Amendments. The parties have extensively negotiated the terms of the Contract and the Amendments, including pricing and financial terms and the terms for the development and construction of the Satellite. Further, disclosure of this information could harm ViaSat in future negotiations regarding satellite construction. Moreover, ViaSat’s Satellite is a state-of-the-art spacecraft with design elements never before built for the commercial satellite industry. ViaSat would be severely disadvantaged if its competitors had access to ViaSat’s unique satellite design, or if they were able to discern the process by which the Satellite has been developed.

6. **Identification of Any Measures Taken By the Submitting Party to Prevent Unauthorized Disclosure (47 C.F.R. § 0.459(b)(6)).** The Confidential Material is not normally distributed, circulated, or provided to any party outside of ViaSat or its satellite manufacturer. Third parties who need access are bound by nondisclosure undertakings. In addition, the Contract to which the Amendments pertain contains provisions requiring both parties to maintain the confidentiality of proprietary information, which includes the terms of the Contract and any amendments thereto.

7. **Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (47 C.F.R. § 0.459(b)(7)).** None of the Confidential Material has previously been disclosed to the public. By the terms of the Contract, ViaSat is bound not to publicly disclose the business and financial terms of the Contract, including the terms in the Amendments. Customarily, the confidential terms in the Amendments would not be released to the public by ViaSat or its satellite manufacturer, Space Systems/Loral, Inc., and therefore is covered by Exemption 4 of FOIA.

8. **Justification of the Period During Which the Submitting Party Asserts That Material Should Not Be Available For Public Disclosure (47 C.F.R. § 0.459(b)(8)).** ViaSat requests that the Confidential Material be treated as confidential for a period of at least 19 years – the minimum expected service life of the Satellite plus the expected time

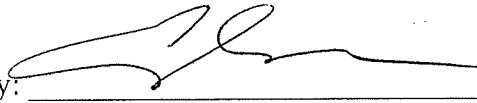
between now and its launch.

9. **Other Information That ViaSat Believes May Be Useful In Assessing Whether Its Request for Confidentiality Should Be Granted (47 C.F.R. § 0.459(b)(9)).** As noted above, the Commission has recognized that spacecraft construction agreements, such as the Contract, contain competitively sensitive information, and need to be protected. The confidential information in the Amendments contains the same type of competitively sensitive information as in the Contract. Consistent with these policies, the Commission has adhered to a policy of not authorizing the disclosure of confidential information on the mere chance that it might be helpful to a third party. Rather, the Commission insists on a showing that the information is a *necessary* link in a chain of evidence that will resolve an issue before the Commission. *See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, ¶ 8 (1998). Further, the Confidential Material falls under Exemption 4 of the Freedom of Information Act (FOIA), which provides that the public disclosure requirement of the statute “does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). The Confidential Material includes sensitive trade secrets and commercial and financial information that squarely fall within Exemption 4, insofar as this information is (i) commercial or financial in nature; (ii) obtained by a person outside government; and (iii) privileged and confidential. *See Washington Post Co. v. U.S. Department of Health and Human Services*, 690 F.2d 525 (D.C. Cir. 1982).

For these reasons, ViaSat respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the enclosed unredacted Amendments.

Respectfully submitted,

ViaSat, Inc.

By:  _____

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