

December 9, 2021

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: REQUEST FOR CONFIDENTIAL TREATMENT
Application to Modify Authorization for T9S Satellite (Call Sign S2669)

Dear Ms. Dortch:

DIRECTV Enterprises, LLC (“DIRECTV”), by its counsel, respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Federal Communication Commission’s (“FCC” or “Commission”) rules,¹ the Commission withhold from public inspection and accord confidential treatment to the redacted portion of the Application for Modification (“Application”) being filed today with respect to the T9S satellite. The redacted portion of this Application contains confidential and commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act (“FOIA”).²

Exemption 4 permits parties to withhold from public information “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”³ 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.⁴

Section 0.457(d)(2) allows persons submitting materials that they wish to 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, DIRECTV hereby submits the following:

¹ See 47 C.F.R. §§ 0.457, 0.459.

² See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

³ 5 U.S.C. § 552(b)(4).

⁴ *Nat’l Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992).

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(1) Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)). DIRECTV seeks confidential treatment for the redacted portion of the Application. The redacted portion of this Application contains commercially sensitive information that falls within Exemption 4 of FOIA.

(2) Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2)). DIRECTV is filing this information as part of its application to modify the authorization for T9S. The Application is being submitted to extend the license period for the satellite.

(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 redacted portion of the Application contains sensitive commercial information that competitors could use to the disadvantage of DIRECTV. The courts have given the term “commercial,” as used in Section 552(b)(4), its ordinary meaning.⁵ 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.”⁶

The redacted portion of the Application contains commercial information regarding the T9S satellite. The information contained in the redacted portion of the Application 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 position of DIRECTV.

(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 satellite industry. Other players operating geostationary satellites include DISH, EchoStar, Sirius XM, Intelsat, SES, and Telesat, among others. The presence of 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 redacted portion of the Application could have a significant impact on DIRECTV’s commercial operations. If competitors had access to the information for which DIRECTV seeks confidential treatment, it could be used as the basis for negotiating their own satellite agreements, to develop a competing satellite network, and/or to develop competing service offerings. This could allow competitors to better compete against DIRECTV and could negatively affect DIRECTV’s future negotiations with potential and existing business partners and customers. Thus, it is “virtually axiomatic” that the information qualifies for

⁵ See *Bd. of Trade of Chi. v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980).

⁶ *Southern Company*, 14 FCC Rcd. 1851, 1860 (1998) (citing *Public Citizen Health Rsch. Grp. v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

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withholding under Exemption 4 of FOIA⁷ and under Sections 0.457(d) and 0.459(b) of the Commission's rules.

(6) Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6)). The information in the redacted portion of the Application is not provided to the public, and DIRECTV does not provide this information to third parties, except pursuant to agreements to maintain confidentiality.

(7) Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7)). DIRECTV has not made the information in the redacted portion of the Application available to the public and has not disclosed the information to any third parties, except pursuant to arrangements intended to maintain confidentiality.

(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)). DIRECTV respectfully requests that the Commission withhold the information in the redacted portion of the Application from public inspection indefinitely. DIRECTV would not, in the normal course of business, provide this information to the public.

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

Respectfully Submitted,



William M. Wiltshire
Counsel for DIRECTV Enterprises, LLC

⁷ Nat'l Parks and Conservation Ass'n v. Kleppe, 547 F.2d 673, 684 (D.C. Cir. 1976).