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March 15, 2004

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**BY HAND DELIVERY**

S2417 SAT-STA-20040107-00002 IB2004000022  
DIRECTV ENTERPRISES, LLC

Managing Director  
Attention: FOIA Officer  
Federal Communications Commission  
445 12th Street, S.W., Room 1-A835  
Washington, DC 20554

Re: Telesat Canada Opposition to Pegasus Development Corporation Freedom of Information Act Request

To whom it may concern:

This letter is written on behalf of Telesat Canada ("Telesat"),<sup>1</sup> to oppose the January 27, 2004 letter request ("FOIA Request") submitted on behalf of Pegasus Development Corporation ("Pegasus").<sup>2</sup> Pegasus seeks release, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and Section 0.461 of the Commission's rules, of documents submitted by DIRECTV Enterprises, LLC on October 7, 2003, December 17, 2003, December 18, 2003, and January 13, 2004,<sup>3</sup> under separate requests for confidential treatment.

The materials dated October 7, 2003, December 17, 2003 and January 13, 2004 pertain to a confidential commercial arrangement between DIRECTV Enterprises, LLC ("DIRECTV") and Telesat (collectively, "the Parties"). These negotiated business documents contain highly sensitive commercial and financial information that Telesat routinely safeguards and does not normally disclose to the public. In fact, Telesat entered into a non-disclosure agreement with DIRECTV to ensure their confidentiality. As such, the materials are entitled to protection from disclosure under FOIA Exemption 4.<sup>4</sup>

Disclosure of this information as Pegasus requests would needlessly and unfairly compromise Telesat's legitimate commercial plans by bestowing an unfair advantage on prospective competitors and/or weaken Telesat's negotiating position

<sup>1</sup> Under Rule 0.459(i), "third party owners of materials submitted to the Commission by any other party may participate in the proceeding resolving the confidentiality of the materials." See 47 C.F.R. § 0.459(i). Telesat is a party to the documents submitted by DIRECTV Enterprises, LLC. Thus, Telesat has standing to oppose the FOIA request.

<sup>2</sup> Letter from Bruce Jacobs, Counsel to Pegasus, to Managing Director, FCC (Jan. 27, 2004) ("Pegasus FOIA Request").

<sup>3</sup> The Pegasus FOIA Request erroneously requests documents allegedly submitted to the Commission on January 6, 2004. There were no documents submitted to the Commission on this date. Telesat assumes that Pegasus meant the documents submitted on January 13.

<sup>4</sup> 5 U.S.C. § 522(b)(4).

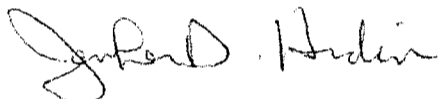
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with potential business partners or customers. DIRECTV and Telesat, by making public certain portions of the confidential materials, have already satisfied Pegasus' request for information regarding whether "DIRECTV's arrangement at [82° W.L.] could have a direct impact on Pegasus' operations."<sup>5</sup> Pegasus thus has no legitimate interest in reviewing the remaining confidential materials. Telesat thus considers Pegasus' continued request for access to the materials as an attempt to gain commercially sensitive information for harassment purposes.

As the International Bureau is aware, DIRECTV's STA application to move the DIRECTV 3 satellite to a Canadian orbital position concerns the provision of urgently-needed backup capacity for Telesat's Nimiq 1 and Nimiq 2 satellites following an anomaly suffered on the latter early in 2003. More than six months after DIRECTV's application to the Commission, and more than one year following the anomaly, Telesat remains without the necessary backup should there be a further in-orbit event. Therefore, Telesat respectfully urges the Commission not to allow parties to unduly and unnecessarily use regulatory procedural tactics to delay grant of an application which so obviously is in the public interest.

For the foregoing reasons, Telesat strongly opposes Pegasus' FOIA Request.

Sincerely,



Bert W. Rein  
Jennifer D. Hindin  
Attorneys for Telesat Canada

cc: Roderick Porter, IB  
Karl Kensinger, IB  
Jay Whaley, IB  
Steven Spaeth, IB  
Neil Dellar, OGC  
Bruce Jacobs, Esq.  
James Barker, Esq.  
Susan Eid, DIRECTV

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<sup>5</sup> Pegasus FOIA Request at 1 n.1.