

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
DIRECTV Enterprises, LLC)	
Request for Special Temporary Authority to)	File Nos. SAT-STA-20030903-00300
Relocate DIRECTV 3 to 82° W.L. and to Conduct)	
Telemetry, Tracking and Command)	
)	
Order Adopting Protective Order		

ORDER

Adopted: March 19, 2004

Released: March 22, 2004

By the Chief, International Bureau:

1. On September 3, 2003, DIRECTV Enterprises, LLC. ("DIRECTV") filed a request for Special Temporary Authority ("STA") to relocate its DIRECTV 3 satellite from a storage orbit to a Canadian Broadcast Satellite Service ("BSS") orbital location, pursuant to an agreement with Telesat Canada.¹ DIRECTV subsequently filed other documents in support of this request. Also, on December 18, 2003, DIRECTV submitted a letter responding to several Satellite Division questions.² Certain DIRECTV's filings contained cover letters requesting confidential treatment of documents submitted in each filing.³ On January 27, 2004, Pegasus Development Corporation ("Pegasus") filed, pursuant to the Freedom of Information Act ("FOIA"),⁴ a request to inspect the documents submitted to the Commission by DIRECTV pertaining to DIRECTV'S STA request.⁵ Pegasus indicated that it would limit its use of

¹ DIRECTV, Inc., Request for Special Temporary Authority to Relocate DIRECTV 3 to 82° W.L. and to Conduct Telemetry, Tracking and Command ("TT&C"), File No. SAT-STA-20030903-00300 (filed September 3, 2003).

² Letter from James H. Barker, Counsel to DIRECTV Enterprises, LLC, to Thomas S. Tycz, Chief, Satellite Division, International Bureau, dated December 18, 2003. Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, to James H. Barker, Counsel to DIRECTV Enterprises, LLC, dated December 8, 2003.

³ See e.g. DIRECTV filings dated October 7, 2003, December 17, 2003, December 18, 2003, and January 13, 2004. DIRECTV released an unredacted copy of the December 18, 2003 letter to the Commission's public file; therefore this letter is not subject to confidential treatment or this protective order. See Letter from Gary M. Epstein to Marlene H. Dortch, Secretary, Federal Communications Commission, dated February 19, 2004.

⁴ 5 U.S.C. § 522, *et. seq.*

⁵ In its initial FOIA filing Pegasus requested a document filed on January 6, 2004. See Freedom of Information Act Request, DIRECTV Enterprises, LLC, filed by Pegasus on January 27, 2004, FOIA 2004-227 ("Pegasus FOIA Request"). Pegasus subsequently amended that request to change the date of the requested document from January

(continued....)

confidential information to relevant FCC proceedings.⁶ On March 15, 2004, both DIRECTV and Telesat Canada (Telesat) filed oppositions to Pegasus' FOIA request.⁷ Pegasus, together with any other individuals or entities that subsequently submit a request, pursuant to FOIA, to review these documents are each hereafter referred to as a "Reviewing Party."

2. DIRECTV has requested to keep confidential all the information in the documents requested by Pegasus that is associated with the DIRECTV 5 satellite, and certain information associated with the DIRECTV 3 satellite.⁸ We conclude that requiring the Licensee to disclose the documents filed by the Licensee to a Reviewing Party pursuant to the terms of a protective order will provide adequate protection to the confidential information included in the documents, without depriving a Reviewing Party of a meaningful opportunity to comment, as required by the Administrative Procedure Act. Consequently, the Bureau hereby adopts the attached Protective Order in Appendix A. We require the Licensee to provide copies of the documents to a Reviewing Party, once that Reviewing Party has executed and delivered the Acknowledgement of Confidentiality that is part of the Protective Order attached to this Order.

3. In the *Confidential Information Policy Order*,⁹ the Commission decided that, if the Commission issued a protective order, interested parties generally will be given at least 30 days from the date the protected material becomes available to file or supplement a petition to deny.¹⁰ Given the relatively small amount of information that is becoming available subject to this Order, the comment and response periods have been shortened.

4. Accordingly, IT IS ORDERED that DIRECTV Enterprises, LLC IS REQUIRED to provide to Pegasus Development Corporation (and any other Reviewing Party that subsequently becomes a party to the Protective Order), a copy of the documents submitted to the Commission on October 7, 2003, December 17, 2003, and January 13, 2004 under the terms of the Protective Order attached to this Order,

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6, 2004 to January 13, 2004. See Letter from Tony Lin, Shaw Pittman LLP, Counsel for Pegasus, to Jay Whaley, Satellite Division, Federal Communications Commission, dated March 2, 2004.

⁶ See Pegasus FOIA Request at 4, n.9.

⁷ See Telesat Canada Opposition to Pegasus Development Corporation Freedom of Information Act Request, filed March 15, 2003. Telesat argues, *inter alia*, that disclosure of the information that Pegasus requests would jeopardize Telesat's commercial plans by bestowing an unfair advantage on prospective competitors and would weaken Telesat's negotiating position with potential business partners or customers. *Id.* at 1-2. See also DIRECTV, Inc. Response to Pegasus Development Corporation Freedom of Information Act Request, filed March 15, 2004. (DIRECTV March 15 Letter). DIRECTV argues that disclosure of the information requested in the FOIA would cause substantial competitive harm to DIRECTV and Telesat, and that there is no overriding public interest requiring disclosure as the redacted terms are not decisionally significant in the DIRECTV 3 proceeding. *Id.* at 1-2, 2-3. These arguments do not affect our conclusion below that the release of the referenced documents to interested parties, subject to the requirements of the protective order, will provide adequate protection to the confidential information included in the documents, without depriving a Reviewing Party of a meaningful opportunity to comment.

⁸ DIRECTV March 15 Letter.

⁹ Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GEN Docket No. 96-55, *Report and Order*, 13 FCC Rcd 24816 (1998) ("*Confidential Information Policy Order*").


¹⁰ *Confidential Information Policy Order*, 13 FCC Rcd at 24839 (para. 34).

once Pegasus Development Corporation, or any other Reviewing Party, as appropriate, has executed such Protective Order.

5. It is further ordered that comments with respect to the information filed pursuant to this protective order must be filed on or before 14 days from the release of this Order and responses must be filed on or before 21 days from the release of this Order.

6. This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Exception 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION


Donald Abelson
Chief, International Bureau

APPENDIX A

Protective Order

1. *Introduction.* On September 3, 2003, DIRECTV Enterprises, LLC. ("DIRECTV") filed a request for Special Temporary Authority ("STA") to relocate its DIRECTV 3 satellite from a storage orbit to a Canadian Broadcast Satellite Service ("BSS") orbital location, pursuant to an agreement with Telesat Canada.¹¹ DIRECTV subsequently filed other documents in support of this request. Also, on December 18, 2003, DIRECTV submitted a letter responding to several Satellite Division questions.¹² Certain DIRECTV's filings contained cover letters requesting confidential treatment of documents submitted in each filing.¹³ On January 27, 2004, Pegasus Development Corporation ("Pegasus") filed, pursuant to the Freedom of Information Act ("FOIA"),¹⁴ a request to inspect the documents submitted to the Commission by DIRECTV pertaining to DIRECTV'S STA request.¹⁵ Pegasus indicated that it would limit its use of confidential information to relevant FCC proceedings.¹⁶ Pegasus, together with any other individuals or entities that subsequently submit a request, pursuant to FOIA, to review these documents are each hereafter referred to as a "Reviewing Party." Consequently, the International Bureau ("Bureau") has adopted this Protective Order to ensure that these documents are afforded adequate protection. This Order reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated and is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

2. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

"Confidential Information" means any information contained in the documents or derived therefrom that is not otherwise available from publicly available sources;

¹¹ DIRECTV, Inc., Request for Special Temporary Authority to Relocate DIRECTV 3 to 82° W.L. and to Conduct Telemetry, Tracking and Command ("TT&C"), File No. SAT-STA-20030903-00300 (filed September 3, 2003).

¹² Letter from James H. Barker, Counsel to DIRECTV Enterprises, LLC, to Thomas S. Tycz, Chief, Satellite Division, International Bureau, dated December 18, 2003. Letter from Thomas S. Tycz, Chief, Satellite Division, International Bureau, to James H. Barker, Counsel to DIRECTV Enterprises, LLC, dated December 8, 2003.

¹³ See e.g. DIRECTV filings dated October 7, 2003, December 17, 2003, December 18, 2003, and January 13, 2004. DIRECTV released an unredacted copy of the December 18, 2003 letter to the Commission's public file; therefore this letter is not subject to confidential treatment or this protective order. See Letter from Gary M. Epstein to Marlene H. Dortch, Secretary, Federal Communications Commission, dated February 19, 2004.

¹⁴ 5 U.S.C. § 522, *et. seq.*

¹⁵ In its initial FOIA filing Pegasus requested a document filed on January 6, 2004. See Freedom of Information Act Request, DIRECTV Enterprises, LLC, filed by Pegasus on January 27, 2004, FOIA 2004-227 ("Pegasus FOIA Request"). Pegasus subsequently amended that request to change the date of the requested document from January 6, 2004 to January 13, 2004. See Letter from Tony Lin, Shaw Pittman LLP, Counsel for Pegasus, to Jay Whaley, Satellite Division, Federal Communications Commission, dated March 2, 2004.

¹⁶ See Pegasus FOIA Request at 4, n.9.

“Counsel” means In-House Counsel and Outside Counsel of Record;

“In-House Counsel” means the attorney or attorneys employed by the Licensee or a Reviewing Party or who is employed by an affiliated entity and who are actively engaged in the conduct of this proceeding, *provided that*, such counsel are not involved in competitive decision-making, *i.e.*, In-House Counsel’s activities, association, and relationship with a client are not such as to involve such counsel’s advice and participation in any or all of the client’s business decisions made in light of similar or corresponding information about a competitor; and

“Outside Counsel of Record” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing the Licensee or a Reviewing Party.

“Relevant Proceedings” means proceedings that involve: Pegasus’ earth station applications, the DIRECTV 3 STA application (SAT-STA-20030903-00300), the DIRECTV 5 STA application (SAT-STA-20040107-0002), and the DIRECTV-News Corp. merger proceeding (MB Docket No. 03-124).

3. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for preparation and the conduct of Relevant Proceedings as delimited in this paragraph and paragraphs 5, 10, and 11, and any subsequent judicial proceeding arising directly from these proceedings and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.

4. *Non-Disclosure of Confidential Information.* Except with the prior written consent of the Licensee, or as hereinafter provided under this Protective Order, no Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

5. *Permissible Disclosure.* Subject to the requirements of paragraph 8, Confidential Information may be reviewed by Counsel. Subject to the requirements of paragraph 8, Counsel may disclose Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in these proceedings, *provided, that*, the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of the Licensee nor do they participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph 5 assisting Counsel in this proceeding; (3) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with these proceedings, or performing other clerical or ministerial functions with regard to documents connected with these proceedings; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph 5. Individuals who have obtained access to Confidential Information in accordance with the provisions of this paragraph 5 and paragraph 8 may discuss and share the contents of the Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 5 and paragraph 8, and with the Commission and its staff.

6. *Protection of Confidential Information.* Persons described in paragraph 5 shall have the obligation to ensure that access to Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Confidential Information are used only as provided in this Protective Order; and (2) the documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 10 below.

7. *Prohibited Copying.* If, in the judgment of the Licensee, the documents contain information so sensitive that it should not be copied by anyone, the relevant pages of the documents shall bear the legend "Copying Prohibited," and no copies of such pages, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to the Licensee.

8. *Procedures for Obtaining Access to Confidential Information.* In all cases where access to Confidential Information is permitted pursuant to paragraph 5, before reviewing or having access to any Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (see Appendix B) and file it with the Bureau, on behalf of the Commission, and serve it upon the Licensee so that the Acknowledgment is received by the Licensee at least five business days prior to such person's reviewing such Confidential Information. Where the person seeking access is one described in either clause 3 or 4 of paragraph 5, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. The Licensee shall have an opportunity to object to the disclosure of the documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 5, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from the Licensee shall not have access to Confidential Information. Upon receipt of an Acknowledgment and upon there being no objection to the person seeking access by the Licensee, the Licensee shall deliver a copy of the documents to such person.

9. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

10. *Filings with the Commission.* Persons described in paragraph 5 may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this order must be clearly marked: "Confidential Information included pursuant to Protective Order, File No. SAT-STA-20030903-00300;" and

d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Bureau, and the Licensee. Such confidential portions shall be served under seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Confidential Information shall also file redacted copies of the pleading containing no Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of

pleadings containing Confidential Information to Commission Staff unless the Bureau so requests. Any courtesy copies shall be submitted under seal.

11. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Confidential Information.

12. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by the Licensee of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by the Licensee shall not be deemed a waiver of any privilege or entitlement as long as the Licensee takes prompt remedial action.

13. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of the documents or any Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the Licensee of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the Licensee has a full opportunity to oppose such production prior to the production or disclosure of the documents or Confidential Information.

14. *Violations of Protective Order.* Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the Licensee. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Licensee at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

15. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 5 shall destroy or return to the Licensee the documents and all copies of the same. No material whatsoever derived from may be retained by any person having access thereto, except Counsel (as described in paragraph 5) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared on behalf of that party. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for the Licensee not more than three weeks after conclusion of this proceeding. The provisions of this paragraph 15 regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

APPENDIX B

Acknowledgment of Confidentiality

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 5 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in "competitive decision-making" as that term is used in the definition of In-House Counsel in paragraph 2 of the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Confidential Information is used only as provided in the Protective Order; and (2) the documents are not duplicated except as specifically permitted by the terms of paragraph 10 of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at _____ this ____ day of _____, ____.

[Name]

[Position]

[Address]

[Telephone]