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**REDACTED VERSION FOR PUBLIC FILE**

September 15, 2004

Received

SEP 28 2004

Policy Branch  
International Bureau

**BY HAND DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

RECEIVED

SEP 15 2004

Federal Communications Commission  
Office of Secretary

Re: *WB Holdings 1 LLC – Request for Special Temporary Authorization  
SAT-STA-20040914-00176*

**Request for Confidential Treatment**

Dear Ms. Dortch:

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 and 0.459, WildBlue Communications, Inc. and WB Holdings 1 LLC (collectively, "WildBlue") respectfully request that the Commission withhold from public inspection, and accord confidential treatment to, the enclosed unredacted version of the binding Letter Agreement (the "Agreement"), dated September 13, 2004, between WildBlue and Intelsat LLC ("Intelsat"). A redacted version was previously filed in connection with WildBlue's above referenced request for Special Temporary Authorization ("STA").

The Agreement relates to WildBlue's purchase of the Ka-band payload aboard the Intelsat Americas 8 ("IA-8") satellite that is scheduled to be launched later this year. The redacted portions comprise sensitive trade secrets and commercial and financial information that squarely fall within Exemption 4 of the Freedom of Information Act, 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."<sup>1</sup> WildBlue is voluntarily providing this

<sup>1</sup>

5 U.S.C. § 552(b)(4).

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trade secret, commercial and financial information, which is "of kind that would not customarily be released to the public" by WildBlue, in connection with its STA request to operate the Ka-band payload on IA-8 at the 109.2° W.L. orbital location licensed to WildBlue. Therefore, this information is "confidential" under Exemption 4 of FOIA.<sup>2</sup> Moreover, WildBlue would suffer substantial competitive harm if the redacted portions of the Agreement were disclosed.<sup>3</sup>

In support of this request and pursuant to Section 0.459(b) of the Commission's rules,<sup>4</sup> WildBlue provides the following information.

**1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT<sup>5</sup>**

WildBlue seeks confidential treatment of those portions of the Agreement that were redacted from the STA filing.

**2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION<sup>6</sup>**

The Agreement is being provided to Commission Staff in this proceeding out of an abundance of caution to ensure that the record is complete.

**3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED<sup>7</sup>**

The information for which WildBlue seeks confidential treatment contains sensitive commercial and financial information "which would customarily be guarded from competitors."<sup>8</sup> Certain categories of confidential commercial and financial information appear throughout the Agreement, including without limitation disclosures of business plans, pricing, and other financial terms and conditions, all of which were negotiated between the parties. Moreover, the Agreement would not customarily be

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<sup>2</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>3</sup> See *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir 1974).

<sup>4</sup> 47 C.F.R. § 0.459(b).

<sup>5</sup> 47 C.F.R. § 0.459(b)(1).

<sup>6</sup> 47 C.F.R. § 0.459(b)(2).

<sup>7</sup> 47 C.F.R. § 0.459(b)(3).

<sup>8</sup> 47 C.F.R. § 0.457.

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released to the public by WildBlue or Intelsat, and therefore it is covered by Exemption 4 of FOIA when, as here, it is submitted by WildBlue to the Government.

**4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION<sup>9</sup>**

The Agreement concerns the acquisition of a Ka-band payload capable of providing a range of satellite services throughout North America. This payload will provide WildBlue the ability to develop data on Ka-band operations that would be of commercial value to it and a number of current Commission licensees of potentially competitive Ka-band satellite systems and equipment manufacturers.

**5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM<sup>10</sup>**

Because the Agreement reflects negotiations over the structure of a Ka-band payload acquisition and the value of such a payload, the information for which WildBlue seeks confidential treatment could be used by its competitors as the basis for (i) negotiating a Ka-band payload acquisition contract, (ii) developing a competing satellite network, or (iii) designing competitive broadband or video service offerings (satellite or terrestrial). Moreover, disclosure of this contract could adversely affect WildBlue's relationship with other vendors. Vendors have a legitimate expectation that their confidential information and trade secrets – pricing information, commercial conditions, etc. – will not be made available to third parties who do not have a relationship with their customer's program. Disclosure of the Agreement in this case could harm WildBlue in its future negotiations with vendors.

**6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE<sup>11</sup>**

Paragraph 5 of the Agreement requires the parties to maintain confidentiality of proprietary information, which includes the terms of the contract itself.

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<sup>9</sup> 47 C.F.R. § 0.459(b)(4).

<sup>10</sup> 47 C.F.R. § 0.459(b)(5).

<sup>11</sup> 47 C.F.R. § 0.459(b)(6).

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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<sup>12</sup>**

The redacted portions of the Agreement have not previously been disclosed to the public or any third party.

**8. JUSTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES<sup>13</sup>**

As demonstrated above, WildBlue and Intelsat have a significant interest in maintaining the confidentiality of the proprietary commercial and financial information contained in the Agreement, and have taken steps to ensure such confidentiality. WildBlue requests that the redacted portions of the Agreement be treated as confidential for a period of at least three years. The commitment of the parties to preserve the proprietary nature of the documents is demonstrated by their perpetual obligation to maintain confidentiality of the proprietary information. Therefore, WildBlue's request for confidential treatment for a period of three years is reasonable.

**9. OTHER INFORMATION THAT WILDBLUE BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED<sup>14</sup>**

The Commission has recognized that spacecraft procurement agreements contain competitively sensitive information, and need to be protected from disclosure.<sup>15</sup> Consistent with this conclusion, 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.<sup>16</sup> Since the majority of the terms of the Agreement are already available from the redacted copy filed with the STA request, it is highly unlikely that such a showing could be made.

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<sup>12</sup> 47 C.F.R. § 0.459(b)(7).

<sup>13</sup> 47 C.F.R. § 0.459(b)(8).

<sup>14</sup> 47 C.F.R. § 0.459(b)(9).

<sup>15</sup> See, e.g., *GE American Communications, Inc.*, 16 FCC Rcd. 6731 (Int'l Bur. 2001).

<sup>16</sup> *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd. 24816, ¶8 (1998).

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For these reasons, WildBlue respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the unredacted version of the Agreement attached hereto.

Respectfully submitted,

A handwritten signature in cursive script that reads "William M. Wiltshire".

William M. Wiltshire  
HARRIS, WILTSHIRE & GRANNIS LLP  
1200 Eighteenth Street, N.W.  
Washington, DC 20036  
202-730-1300

*Counsel for WildBlue*





Ramu Potarazu  
President

13 September 2004  
Ref.: President-13-09-2004

Mr. Tom Moore  
CEO WildBlue  
5970 Greenwood Plaza Blvd., Suite 300  
Greenwood Village, CO 80111

Dear Mr. Moore:

THIS LETTER AGREEMENT ("**Letter Agreement**") is entered into by and between Intelsat LLC, a Delaware limited liability company with offices located at North Tower, 2<sup>nd</sup> Floor, 90 Pitts Bay Road, Pembroke HM08, Bermuda ("**Intelsat**"), and WildBlue Communications, Inc. with offices located at 5970 Greenwood Plaza Blvd., Suite 300 Greenwood Village, CO 80111. ("**WildBlue**"). Intelsat and WildBlue have been discussing the purchase of the Ka-band payload on the Intelsat Americas 8 satellite ("**IA-8**") by WildBlue. If the following accurately reflects your understanding of the result of our discussions, please so indicate by signing above your name at the end of this Letter Agreement.

1. Scope and Purpose of the Project. The purpose of this Letter Agreement is to serve as the material terms for a definitive agreement between WildBlue and Intelsat ("**Definitive Agreement**") for the purpose stated above.

2. Commercial Relationships. Upon execution of this Letter Agreement, the Parties shall use their commercially reasonable efforts to enter into a Definitive Agreement which shall include the following commercial arrangements:

(a) Purchase Price: WildBlue agrees to acquire the entire Ka band payload on IA-8 ("**Ka band Payload**") and to contribute to the cost of launching, insuring and providing TT&C Services for IA-8 for the total purchase price of ("**Total Purchase Price**"), payable as follows:

REDACTED

(i) Initial Purchase Price:

- o upon delivery of the Ka band Payload ("**Delivery**"). Delivery shall be deemed to have occurred, and ownership of the Ka band Payload shall transfer to WildBlue, when IA-8 reaches 109.2 degrees W.L.

REDACTED

REDACTED ○ four weeks after Delivery (this amount, together with the payable upon Delivery, the "Initial Purchase Price").

(ii) Financing Charges

REDACTED ○ on the first anniversary of Delivery ;  
○ An additional financing charge of on each of the second, third, fourth and fifth anniversaries of Delivery.

(b) As soon as practicable after launch, Intelsat will place IA-8 at 109.2 degrees W.L. After Delivery, IA-8 will remain at 109.2 degrees W.L. for no less than the minimum time necessary to allow WildBlue to perform its intended commercial service in the Ka band from 109.2 W.L. (the "Minimum Period").

REDACTED (c) Upon payment of to WildBlue, Intelsat has the right ("Call Option") to purchase back the Ka band Payload from WildBlue at any time

REDACTED

(d) At any time following Delivery and payment of the Initial Purchase Price, WildBlue may require Intelsat to purchase the Ka band Payload from WildBlue for ("Put Option")

REDACTED

(e) Exercise of either the Call Option or the Put Option will relieve WildBlue of the obligation to pay any unpaid portion of the Financing Charge as of the date of exercise, but not from the obligation to pay any unpaid portion of the Initial Purchase Price, whether or not due at the time the Call Option or the Put Option is exercised. Upon exercise of the Put Option or the Call Option, WildBlue shall cease all commercial operations on the Ka band Payload.

(f) Intelsat, in its sole and absolute discretion and at its cost, may move IA-8 from that location at anytime after the earlier of (i) expiration of the Minimum Period, (ii) the exercise by Intelsat of the Call Option, or (iii) the exercise by WildBlue of the Put Option.

3. Binding Obligation. This Letter Agreement is the binding obligation of the Parties.

4. Definitive Agreement. The Parties agree to negotiate in good faith, and to use their commercially reasonable efforts to conclude and execute, a Definitive Agreement with respect to the matters contained herein as expeditiously as possible,

preferably on or before 30 September 2004; provided, however, that nothing in this Letter Agreement shall obligate either Party to execute a Definitive Agreement. The Parties agree that any Definitive Agreement that may be concluded and executed in connection herewith shall be governed by the laws of the State of New York, U.S.A.

5. Confidentiality. The Parties agree that any information received from the other Party in connection with the transaction(s) contemplated herein (including this Letter Agreement) will be used solely for the purpose of evaluating and assessing the interests of a possible transaction between the Parties, and that they will safeguard the confidentiality of any such information with at least the same degree of care they apply to the safeguard of their own confidential information, and in no event less than with the same degree of care a reasonable person would exert under the circumstances. The provisions of this paragraph 5 will survive the termination of this Letter Agreement.

6. Expenses. Each Party will pay all of its expenses, including legal fees, incurred in connection with the negotiation and conclusion of contemplated transactions relating to the Definitive Agreement.

7. Termination. Either Party may terminate this Letter Agreement at any time and for any reason by sending written notice thereof to the other Party. Unless earlier terminated, this Letter Agreement shall remain valid for a period of two (2) months, provided that this Letter Agreement may be extended by mutual written agreement. Notwithstanding the foregoing or anything contained in this Letter Agreement to the contrary, this Letter Agreement is subject in all respects to the approval of the managing member of Intelsat and the board of directors of Intelsat, Ltd. and shall terminate automatically and have no further force or effect if such approvals have not been obtained by September 30, 2004. After termination of this Letter Agreement, the Parties shall be released from any and all further obligations to each other, except the obligations of the Non-Disclosure Agreement between the Parties and those contained in the confidentiality provisions set forth above shall not be affected by the termination of this Letter Agreement.

8. Miscellaneous.

(a) Neither Party is an agent or partner of the other Party, nor has authority to represent or bind the other Party as to any matters.

(b) Neither Party may assign, delegate and/or transfer its rights, interests or obligations created under this Letter Agreement to any other entity without the prior written consent of the other Party, provided that either Party may assign this Letter Agreement to any entity that directly or indirectly is controlling, controlled by, or under common control with such Party.




(c) This Letter Agreement and the rights and responsibilities of the Parties hereunder shall be subject to and construed in accordance with the laws of the state of New York (USA).

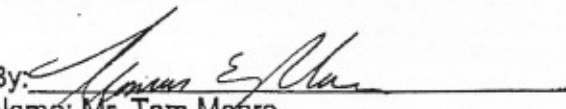
(d) The Parties agree to comply with all applicable laws and regulations of relevant governments or governmental agencies with respect to the matters to be addressed herein.

If the above reflects your understanding of the nature and particulars of our relationship, please so indicate by signing below.

**INTELSAT LLC**

By:   
Name: Ramu V. Potarazu  
Title: President, Intelsat (Bermuda), Ltd.

**WILDBLUE COMMUNICATIONS, INC.**

By:   
Name: Mr. Tom Moore  
Title: CEO