



Wiley Rein & Fielding LLP

FOR INTERNAL USE ONLY  
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1776 K STREET NW  
WASHINGTON, DC 20006  
PHONE 202.719.7000  
FAX 202.719.7049

Virginia Office  
7925 JONES BRANCH DRIVE  
SUITE 6200  
McLEAN, VA 22102  
PHONE 703.905.2800  
FAX 703.905.2820

www.wrf.com

January 22, 2007

Jennifer D. HIndin  
202.719.4975  
jhindin@wrf.com

FILED/ACCEPTED

JAN 22 2007

**BY HAND DELIVERY**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

**Re: CONFIDENTIAL INFORMATION  
Intelsat North America LLC Request for Confidential Treatment,  
File No. SAT-STA-20061102-00128**

Dear Ms. Dortch:

By its attorneys, Intelsat North America LLC (“Intelsat”) respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment to the New Slot Usage Agreement between Europe\*Star and PanAmSat Europe and to Schedule 1, Schedule 2, Appendix Part 1 and Appendix Part 2 to that agreement (collectively, the “Agreement”) and a letter from the German Regulator regarding operation of a replacement satellite (“Annex 1”). A copy of these confidential materials has been emailed to Karl Kensinger and Jabin Vahora of the International Bureau. As explained below, the Agreement and Annex 1 contain commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act (“FOIA”). See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

Exemption 4 permits parties to withhold from public information “trade secrets and commercial or financial information obtained from a person and privileged or confidential-categories of materials not routinely available for public inspection.” *Id.* 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. See *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), *cert denied*, 507 U.S. 984 (1993).

Section 0.457(d)(2) allows persons submitting materials that they wish 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

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contained in Section 0.459(b) for such requests, Intelsat hereby submits the following:

(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*. Intelsat seeks confidential treatment for the enclosed New Slot Usage Agreement between Europe\*Star and PanAmSat Europe and Schedule 1, Schedule 2, Appendix Part 1 and Appendix Part 2 to that agreement (collectively the "Agreement") and for the enclosed letter from the German Regulator submitted as Annex 1. The Agreement and Annex 1 relate to Intelsat's proposed relocation of Intelsat 601 to the 47.5° E.L. orbital location. The Agreement and Annex 1 contains commercially sensitive information that falls within Exemption 4 of FOIA.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*: Intelsat submits the Agreement and Annex 1 in response to the letter from Robert B. Nelson, Chief, Satellite Division, International Bureau dated January 5, 2007, which requests a copy of Europe\*Star's authorization from the German Administration to operate at the 47.5° E.L. orbital position and relevant written "arrangements concerning the operation of the Intelsat 601 satellite at the 47.5° E.L. orbital position" with respect to Intelsat's pending request for special temporary authority in File No. SAT-STA-200061102-00128.

(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 Agreement and Annex 1 contain sensitive commercial information that competitors could use to Intelsat's disadvantage. The courts have given the term "commercial," as used in Section 552(b)(4), its ordinary meaning. *See Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980). 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." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

The Agreement and Annex 1 contain commercial information regarding the proposed relocation of Intelsat 601 to 47.5° E.L. The information contained in the Agreement and Annex 1 meets both definitions of "confidential." First, a decision

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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 Intelsat's competitive position.

(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 telecommunications satellite industry. Other large players in the geostationary satellite service market include Eutelsat and SES Americom. The presence of these large 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 Agreement and Annex 1 could have a significant impact on Intelsat's commercial operations. If business partners, customers or competitors had access to this information, it could negatively affect Intelsat's future negotiations with potential and existing business partners and customers. Specifically, business partners and customers could use the information gleaned from the Agreement and Annex 1 to negotiate more favorable terms in their own service or capacity agreements. Competitors could use this information to better compete against Intelsat. Thus, it is "virtually axiomatic" that the information qualifies for withholding under Exemption 4 of FOIA, *see National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir., 1976), and under Sections 0.457(d)(2) and 0.459(b).

(6) *Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*: None of this information is provided to the public, and Intelsat does not provide this information to third parties except pursuant to agreements to maintain confidentiality. Furthermore, the Agreement contains a confidentiality provision requiring the conclusion and terms of the Agreement to be kept confidential.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))*: Intelsat has not made the Agreement or Annex 1 available to the public and has not disclosed the Agreement or Annex 1 to any third parties.

(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))*: Intelsat respectfully requests that the Commission withhold the Agreement and Annex 1 from public inspection indefinitely. On balance, the need to protect

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Intelsat from competitive harm as a result of disclosure of the Agreement and Annex 1 outweighs any benefit of public disclosure which, in the ordinary course of business, would not otherwise occur.

Accordingly, for the foregoing reasons, Intelsat respectfully requests that the Agreement and Annex 1 and the information contained in the Agreement and Annex 1 be kept confidential and be withheld from public inspection at all times.

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

Sincerely,

*/s/ Jennifer D. Hindin*

Jennifer D. Hindin  
*Counsel for Intelsat North America LLC*

cc (by email): Karl Kensinger (Karl.Kensinger@fcc.gov)  
Jabin Vahora (Jabin.Vahora@fcc.gov)