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PUBLIC VERSION

FILED/ACCEPTED

September 15, 2008

SEP 15 2008

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Federal Communications Commission  
Office of the Secretary

**BY HAND DELIVERY**

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

Re: REDACTED - FOR PUBLIC INSPECTION  
PanAmSat Licensee Corp. Request for Confidential Treatment,  
File No. SAT-STA-20080911-00187, Call Sign S2704

Dear Ms. Dortch:

By its attorneys, PanAmSat Licensee Corp. ("PanAmSat") 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 an amendment to an agreement regarding the Intelsat 5 (formerly PAS-9) satellite (Call Sign S2704), which is being filed in both redacted and un-redacted form with a copy of this letter. This agreement contains 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 contained in Section 0.459(b) for such requests, PanAmSat hereby submits the following:



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(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*: PanAmSat seeks confidential treatment for the enclosed Amendment #3 to the February 14, 2002 agreement between PanAmSat Corporation (now known as Intelsat Corporation) and Arab Satellite Communications Organization ("ARABSAT").<sup>1</sup> This amendment relates to PanAmSat's continued operation of the Intelsat 5 satellite at the 26.15° E.L. orbital location. As explained in the pending application for Special Temporary Authority,<sup>2</sup> Intelsat 5 is currently licensed to operate at 26.15° E.L.<sup>3</sup> At this orbital location, PanAmSat has been leasing C-band capacity to ARABSAT. The amendment extends the agreement between PanAmSat and ARABSAT through the end of 2008. The amendment contains commercially sensitive information that falls within Exemption 4 of FOIA.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*: PanAmSat submits this agreement in connection with its application for Special Temporary Authority to continue to operate the Intelsat 5 satellite's C-band payload and Ku-band Telemetry, Tracking and Command ("TT&C") frequencies at 26.15° E.L.

(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 amendment contains sensitive commercial and financial information that competitors could use to PanAmSat's disadvantage. The courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings. 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*

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<sup>1</sup> Amendments #1 and #2 and the February 14, 2002 agreement were previously submitted to the FCC under a request for confidential treatment.

<sup>2</sup> See PanAmSat Licensee Corp., Request for Special Temporary Authority, File No. SAT-STA-20080911-00187 (filed Sept. 11, 2008).

<sup>3</sup> See *Policy Branch Information; Actions Taken*, Report No. SAT-00408, File No. SAT-MOD-20061018-00123 (Dec. 15, 2006) (Public Notice).

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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 amendment to the agreement with ARABSAT contains commercial information regarding the continued operation of Intelsat 5 at 26.15° E.L. The information contained in this agreement 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 positions of PanAmSat and ARABSAT.

(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, SES Americom and Telesat. 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 amendment could have a significant impact on PanAmSat's commercial operations. If business partners/customers or competitors had access to this information, it could negatively affect PanAmSat's future negotiations with potential and existing business partners/customers. Specifically, business partners/customers could use the information gleaned from the agreement to negotiate more favorable terms in their own service or capacity agreements. Competitors could use this information to better compete against PanAmSat. 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 PanAmSat 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 the Information to Third Parties (Section*



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0.459(b)(7)): PanAmSat has not made this agreement available to the public and has not disclosed this agreement 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)):*  
PanAmSat respectfully requests that the Commission withhold this agreement from public inspection indefinitely. On balance, the need to protect PanAmSat from competitive harm as a result of disclosure of this agreement outweighs any benefit of public disclosure which, in the ordinary course of business, would not otherwise occur.

Accordingly, for the foregoing reasons, PanAmSat respectfully requests that the information contained in its amendment to its agreement with ARABSAT 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,

A handwritten signature in cursive script that reads "Jennifer D. Hindin".

Jennifer D. Hindin  
Counsel for PanAmSat Licensee Corp.

**PUBLIC VERSION**

Amendment #3

**Business Proprietary Information Deleted**

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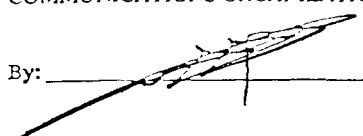
Business Proprietary Information Deleted

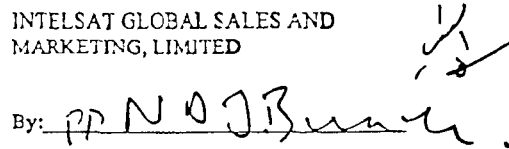
REDACTED - FOR PUBLIC INSPECTION

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

ARABSAT SATELLITE  
COMMUNICATIONS ORGANIZATION

INTELSAT GLOBAL SALES AND  
MARKETING, LIMITED

By: 

By: 

Name: Khalid Ahmed Balkheour

Name: SUZANNE ANEFADI

Title: President & CEO

SENIOR CONTRACTS MANAGER  
INTELSAT GLOBAL SALES  
& MARKETING LTD.

Date: 25/06/2008

Date: 18 July 2008