

REQUEST FOR CONFIDENTIAL TREATMENT

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EX PARTE OR LATE FILED

ACCEPTED/FILED

March 5, 2018

MAR - 5 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

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Re: Request for Confidential Treatment

Dear Ms. Dortch:

Pursuant to Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), Ligado Networks Subsidiary LLC ("Ligado") hereby requests confidential treatment of Exhibit A to the attached *ex parte* submission, which is being filed in connection with IBFS File Nos. SES-MOD-20170413-00388, SES-AMD-20170726-00812, SES-MOD-20170413-00389, and SES-AMD-20170726-00813. In support of this request, Ligado states as follows:

- (1) **Identification of the specific information for which confidential treatment is sought.** Ligado requests that the Commission withhold from public inspection, and afford confidential treatment to, Exhibit B of the attached *ex parte* submission ("Confidential Material"). Ligado requests that the Commission effect this request by withholding the entirety of the unredacted "confidential" version of the *ex parte* submission from public inspection.
- (2) **Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.** The *ex parte* submission is being filed in connection with IBFS File Nos. SES-MOD-20170413-00388, SES-AMD-20170726-00812, SES-MOD-20170413-00389, and SES-AMD-20170726-00813. The Confidential Material contains proprietary and sensitive technical information related to matters raised in connection with those applications.
- (3) **Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.** The Confidential Material contains detailed technical information regarding Ligado's network. This information is proprietary and commercially and competitively sensitive. Public disclosure of this information could place Ligado at a competitive disadvantage vis-à-vis its competitors, and damage Ligado's position in the marketplace. The Commission has long recognized that competitive harm can result from the

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disclosure of confidential business information. *See Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41 (May 2, 1986).

- (4) **Explanation of the degree to which the information concerns a service that is subject to competition.** The Confidential Material concerns Ligado's activities in the market for satellite services. Ligado is subject to competition from numerous existing and potential service providers. Participants in adjacent market segments—e.g., wireline and wireless—apply additional competitive pressure.
- (5) **Explanation of how disclosure of the information could result in substantial competitive harm.** As discussed above, the Confidential Material contains sensitive technical information that is proprietary and commercially and competitively sensitive. Ligado has a commercial interest in all of this information and would be harmed by its disclosure. Among other things, the Confidential Material contains sensitive technical information related to the operational parameters of the Ligado network. This information is likely to inform the course of future coordination efforts. The Commission has recognized the “commercially sensitive nature of coordination of satellite systems” *See Amendment of Part 0 of the Commission's Rules Regarding Public Information, the Inspection of Records, and Implementing the Freedom of Information Act*, 24 FCC Rcd 6904, at 13 (2008). Accordingly, the Commission has made clear that documents related to coordination are privileged and confidential, falling within the scope of Exemption 4 to FOIA. 47 C.F.R. § 0.457(d)(1)(viii); *see also, e.g., Robert J. Butler*, 6 FCC Rcd 5414 (1991).
- (6) **Identification of any measures taken by the submitting party to prevent unauthorized disclosure.** The Confidential Material is not normally distributed, circulated, or provided to any party outside of Ligado that is not bound by confidentiality obligations. Ligado treats this information as sensitive information; thus only certain personnel within the company have access to it.
- (7) **Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.** The Confidential Material is not available to the public, and has not previously been disclosed to third parties not bound by confidentiality obligations, excepting agents of the Commission.

- (8) **Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** Ligado maintains that the Confidential Material should remain subject to confidential treatment indefinitely. Even historical data can be used to track trends or business decisions, and this information could then be used against Ligado.
- (9) **Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.** Ligado notes that the Confidential Material is exempt from disclosure under Exemption 4 to FOIA. 5 U.S.C. § 552(b)(4). Exemption 4 covers “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” *Id.* The exemption extends to all information that is: (i) commercial or financial, (ii) obtained from a person, and (iii) privileged or confidential. *See National Parks and Conservation Association vs. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974). The Confidential Material meets all three of these prongs.

First, the terms “commercial” and “financial” are “given their ordinary meaning,” and include any information in which a submitter holds a “commercial interest.” *Public Citizen Health Research Group vs. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). As noted above, the Confidential Material contains sensitive commercial and financial information. Ligado has a commercial interest in all of this information; thus, it is “commercial or financial.”

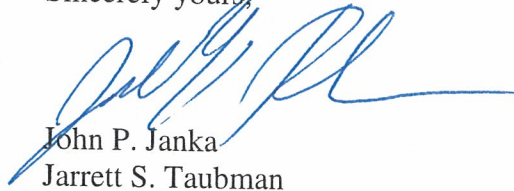
Second, “obtained by a person” refers to receipt of information from “a wide range of entities, including corporations.” *Landfair v. U.S. Dep’t. of Army*, 645 F.Supp. 325, 327-28 (D.D.C. 1986). Ligado is a corporation and it provided the Commission with the Confidential Material; thus, the information at issue here is “obtained by a person.”

Third, information is privileged or confidential if disclosure of it (i) is likely to cause substantial harm to the submitter’s competitive position, (ii) would make it difficult for the government to obtain reliable information in the future, or (iii) would impair other governmental interests. *See Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 28-29 (D.D.C. 2000). As discussed above, disclosure of the Confidential Material would cause substantial harm to Ligado’s competitive position. For this reason, disclosure of the Confidential Material also would encourage Ligado and others “to be less forthcoming in their submissions, out of concern both for appearances and their own financial interests.” *Id.* at 29-30.

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Please contact the undersigned should you have any questions concerning this filing.

Sincerely yours,

A handwritten signature in blue ink, appearing to be "John P. Janka" or "Jarrett S. Taubman", written over the typed names.

John P. Janka
Jarrett S. Taubman

Counsel for Ligado Networks Subsidiary LLC

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March 5, 2018

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Iridium Applications to Modify Its Existing Blanket Earth Station Licenses,
IBFS File Nos. SES-MOD-20170413-00388 and SES-AMD-20170726-00812;
SES-MOD-20170413-00389 and SES-AMD-20170726-00813**

Dear Ms. Dortch:

Ligado Networks Subsidiary LLC (“Ligado”) has repeatedly expressed concerns with respect to the risk of harmful interference into its satellite network posed by the operations proposed by Iridium in the above-referenced applications (the “Iridium Applications”). Ligado has highlighted several factors that exacerbate this risk, including Iridium’s unexplained and unsubstantiated proposal to operate earth stations at power levels that are up to *80 times higher* than those permitted in Iridium’s current authorizations. Ligado has also noted Iridium’s ongoing refusal to provide the technical information necessary for the Commission and other stakeholders to fully and accurately evaluate the potential impact of Iridium’s proposed operations on satellite networks in adjacent spectrum.

Attached as Exhibit A is technical analysis that provides more details about the nature and scope of the risk to the Ligado satellite network. In conducting this analysis, Ligado had no choice but to make certain reasonable assumptions about Iridium’s likely operations given its ongoing failure to provide basic information that would resolve relevant uncertainties for the record. The attached analysis highlights some of the critical data points that Iridium has failed to provide, including antenna patterns, the likely geographic distribution of its earth stations, the details about its use cases, and the number of stations likely to operate simultaneously. The attached analysis also illustrates the nature of the interference risk that could be posed by Iridium’s proposed operations and lays out the material questions of fact that remain unresolved in this proceeding—and thus preclude grant of the Iridium Applications at this time. Those issues can be resolved only by Iridium providing additional information about how it intends to operate the proposed earth stations. Without this information, neither Ligado nor the Commission can fully evaluate the potential impact of Iridium’s proposed operations on Ligado or any other neighboring services.

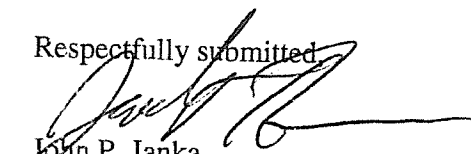
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If the Commission is nevertheless prepared to grant the Iridium Applications, it should at least condition any such grant on Iridium's successful completion of coordination with adjacent operators prior to the initiation of service over its newly licensed facilities. Among other things, the coordination process would provide a mechanism through which adjacent operators could obtain information from Iridium necessary to enable them to evaluate the need for additional safeguards, including safeguards to manage the types of risks detailed in Exhibit A. Such coordination would also ensure that Iridium respects the priority of other operators like Ligado with respect to Iridium's terminal downlink (receive) operations.

The outstanding questions with respect to the earth station operations proposed in the Iridium Applications are not limited to those identified above or in Exhibit A; for example, there are also significant questions about whether those earth stations are capable of coexisting with the operations of other adjacent-band operators in the current and anticipated spectrum environment.¹ As noted previously, Iridium has taken inconsistent positions before the Commission—*e.g.*, claiming in the Ligado license modification proceeding that its earth stations would not be able to coexist with Ligado's proposed operations, while making the opposite assertion in this proceeding. To ensure that Iridium's new earth stations do not prejudice adjacent-band operations, if the Commission grants the Iridium Applications it should also require Iridium's earth stations to tolerate the operating environment described in the *2003 ATC Order*² and affirm that any such grant does not alter the secondary status of Iridium's Big LEO band downlinks.

Respectfully submitted,



John P. Janka
Jarrett S. Taubman

Counsel to Ligado Networks Subsidiary LLC

Enclosure

cc: Jose Albuquerque
Paul Blais
Stephen Duall
Karl Kensinger

¹ See Letter from John P. Janka, Counsel for Ligado Networks Subsidiary LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SES-MOD-20170413-00388 and SES-AMD-20170726-00812; SES-MOD-20170413-00389 and SES-AMD-20170726-00813 at 1 (Dec. 18, 2017).

² See *Flexibility for Delivery of Communications by Mobile Satellite Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 Band*, Report and order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, at para. 178 (2003) ("2003 ATC Order").