

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

In the Matter of
GE American Communications, Inc.
Application for Authority to Construct, Launch,
And Operate a Ka-Band Satellite System in the
Fixed-Satellite Service
File Nos. 169 through 173-SAT-P/L-95
54-SAT-AMEND-97
IBFS File Nos.
SAT-LOA-19950929-00132/00136
SAT-AMD-19970237-00028

ORDER ADOPTING PROTECTIVE ORDER

Adopted: October 2, 2001

Released: October 3, 2001

By the Deputy Chief, Satellite and Radiocommunication Division:

I. INTRODUCTION

1. In this Order, we require GE American Communications, Inc. ("GE Americom") to disclose information to PanAmSat Licensee Corporation ("PanAmSat") pursuant to the protective order included as Attachment A to this Order. By this action, we protect the confidentiality of competitively sensitive information, while enabling other parties to participate adequately in ongoing proceedings.

II. BACKGROUND

2. On May 9, 1997, the International Bureau ("Bureau") issued GE Americom a license to launch and operate five satellites in the fixed-satellite service in the Ka-band. As a requirement of that license, GE Americom was required to commence construction of the first satellite in its system by May 1998. At the Bureau's request, GE Americom submitted a copy of its construction contract on March 20, 2000. GE Americom also requested that the contract be considered exempt from disclosure requirements under the Freedom of Information Act ("FOIA") and withheld from public inspection.

1 GE American Communications, Inc., Application for Authority to Construct, Launch, And Operate a Ka-Band Satellite System in the Fixed-Satellite Service, Order and Authorization, 12 FCC Rcd 6475 (Int'l Bur., 1997) (GE Americom Ka-band License Order). For purposes of this Order, the "Ka-band" denotes the 17.7-20.2 GHz and 27.5-30.0 GHz bands.

2 GE Americom Ka-band License Order, 12 FCC Rcd at 6485 (para. 32).

3 Letter from Karis A. Hastings, Counsel for GE Americom, Inc., to Thomas Tycz, Chief, Satellite and Radiocommunication Division, FCC (dated March 20, 2000) (GE Americom March 20 Letter).

3. PanAmSat requested disclosure of GE Americom's contract on August 14, 2001.⁴ GE Americom responds that PanAmSat is a direct competitor with GE Americom and thus may benefit unfairly from propriety information.⁵ GE Americom also claims PanAmSat should be barred from reviewing the contract because it seeks information to support a claim on appeal with the Circuit Court that has not been addressed by the Commission.⁶ Nonetheless, GE Americom states any disclosure of the contract and exhibits should be made pursuant to a protective order.⁷

III. DISCUSSION

4. In January 2001, the Bureau released an order in response to a FOIA request from Pegasus Development Corporation ("Pegasus") seeking the same contract and exhibits at issue here.⁸ In that order, we concluded that requiring GE Americom to disclose its contract to Pegasus under a protective order will provide adequate protection to the confidential information included in that contract, without depriving Pegasus of a meaningful opportunity to comment, as required by the Administrative Procedure Act.⁹ We find no reason to depart from that finding here. In fact, GE Americom states that any such disclosure should be made subject to a protective order "that is substantively identical to the one attached to the January Order."¹⁰ Therefore, we require GE Americom to provide copies of its unredacted construction contract to PanAmSat once PanAmSat has executed the protective order attached to this Order. The attached protective order is substantively identical to the January 2001 protective order.

⁴ Letter from Joseph A. Godles, Attorney for PanAmSat Licensee Corp., to Andrew S. Fishel, Managing Director, FCC (dated August 14, 2001) (*PanAmSat August 14 Letter*).

⁵ Letter from Peter A. Rohrbach, Counsel for GE American Communications, Inc., to Andrew S. Fishel, Managing Director, FCC (dated September 14, 2001) (*GE Americom September 14 Letter*).

⁶ *GE Americom September 14 Letter*, at 2.

⁷ *GE Americom September 14 Letter*, at 7.

⁸ GE American Communications, Inc., Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, Order Adopting Protective Order, DA 01-173 (rel. Jan. 25, 2001) (*GE Americom Protective Order*).

⁹ *GE Americom Protective Order*, at 2.

¹⁰ *GE Americom September 14 Letter*, at 7.

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that GE American Communications, Inc. IS REQUIRED to provide PanAmSat Licensee Corporation a copy of its May 8, 1997, construction contract under the terms of the protective order, attached to this Order, upon execution of the protective order by PanAmSat Licensee Corporation.

6. It is FURTHER ORDERED, that comments with respect to the information filed pursuant to this protective order must be filed on or before November 1, 2000 and responses must be filed on or before November 12, 2001.

7. This Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Cassandra C. Thomas
Deputy Chief
and Radiocommunication Division
International Bureau

Satellite

ATTACHMENT A

**Before the
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Washington, D.C. 20554**

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GE American Communications, Inc.)	File Nos.169 through 173-SAT-P/L-95,
)	54-SAT-AMEND-97
Application for Authority to Construct, Launch, And Operate a Ka-Band Satellite System in the)	IBFS File Nos.
)	SAT-LOA-19950929-00132/00136
Fixed-Satellite Service)	SAT-AMD-19970237-00028

PROTECTIVE ORDER

1. On March 20, 2000, in response to a request from Commission staff, GE American Communications, Inc. ("GE Americom" or "Submitting Party") filed with the Commission a copy of GE Americom's contract with Harris Corporation relating to construction of the GE*Star Ka-band satellite system (the "Contract"). Subsequently, on March 27, 2000, in response to a further request from Commission staff, GE Americom submitted certain exhibits to the Contract (the "Exhibits"). On August 14, 2001, PanAmSat Licensee Corporation ("PanAmSat" or the "Reviewing Party") submitted a request under the Freedom of Information Act ("FOIA") seeking the right to inspect GE Americom's filing of March 20, 2000 and any "related amendments, supplements or additional documentation" provided by GE Americom. This Protective Order is intended to facilitate and expedite the review of the Contract and Exhibits, which may contain trade secrets and/or commercial or financial information that is privileged or confidential. This Protective Order does not constitute a resolution of the merits concerning whether the Contract and Exhibits would be released publicly by the Commission under FOIA or other applicable law or regulation.

2. Non-Disclosure of Confidential Documents. Except with the prior written consent of the Submitting Party, or as hereinafter provided under this Protective Order, neither a Confidential Document nor the contents thereof may be disclosed by the Reviewing Party to any person. "Confidential Documents" shall mean the Contract and the Exhibits, as described above. The Submitting Party has indicated that it considers the Contract and Exhibits to be confidential and believes that they should be subject to protection under FOIA and the Commission's implementing rules.

3. Permissible Disclosure. Subject to the requirements of paragraph 5, Confidential Documents may be reviewed by outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, *i.e.*, counsel's activities, association, and relationship with a client that are such as to involve 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. Subject to the requirements of paragraph 5 and subject to the obligation to secure the confidentiality of Confidential Documents in accordance with the terms of this order, such counsel may disclose Confidential Documents to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) Commission officials involved in this proceeding; (iii) outside consultants or experts retained for the purpose of assisting counsel in these proceedings and

who are not involved in the analysis underlying the business decisions and who do not participate directly in the business decisions of any competitor of any Submitting Party; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of third-party contractors performing one or more of these functions. GE Americom shall make available for review the Confidential Documents at the offices of GE Americom's outside counsel, Hogan & Hartson LLP, 555 Thirteenth Street, NW, Washington, D.C. 20004.

4. Access to Confidential Documents. Persons described in paragraph 3 shall have the obligation to ensure that access to Confidential Documents is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure: (i) that Confidential Documents are used only as provided in this order; and (ii) that Confidential Documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 7.

5. Procedures for Obtaining Access to Confidential Documents. In all cases where access to Confidential Documents is permitted pursuant to paragraph 3, and before reviewing or having access to any Confidential Documents, each person seeking such access shall execute the Acknowledgment of Confidentiality (*see* Appendix A) to the Commission and to the Submitting Party so that it is received by the Submitting Party five business days prior to such person's reviewing or having access to any such Confidential Documents. The Submitting Party shall have an opportunity to object to the disclosure of the Confidential 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 of Confidentiality. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to any disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from the Submitting Party shall not have access to Confidential Documents.

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

7. Use of Confidential Information. Persons described in paragraph 3 may, in any documents that they file in this proceeding, reference information found in Confidential Documents or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedures:

- 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, IBFS File Nos. SAT-LOA-19950929-00132/00136" and
- d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and the Submitting Party. 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 a redacted copy of the pleading

containing no Confidential Information, which copy shall be placed in the Commission's public files. Parties may provide courtesy copies under seal of pleadings containing Confidential Information to Commission staff.

8. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. The Reviewing Party, by viewing this material: (a) agrees not to assert any such waiver; (b) agrees not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agrees that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

9. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of Confidential Documents or Confidential Information that a party has obtained under terms of this order, such party shall promptly notify the Submitting Party of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of any Confidential Document or Confidential Information.

10. 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 Documents provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose Confidential Documents or Confidential Information.

11. Violations of Protective Order. Persons obtaining access to Confidential Documents or Confidential Information under this order shall use the information solely for preparation and the conduct of this proceeding as delimited in paragraphs 4, 7, and 10, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory or judicial proceedings. Should a party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that party shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure of Confidential Information, the violating party 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.

12. Prohibited Copying. If, in the judgment of the Submitting Party, a document contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of such document, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to counsel for the Submitting Party.

13. 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 (which includes any administrative or judicial review), Confidential Documents and all copies of same shall be returned to the Submitting Party. No material whatsoever derived from Confidential Documents may be retained by any person having access thereto, except counsel to a party in this proceeding (as described in paragraph 3) may retain, under the continuing strictures of this Protective Order, two copies of pleadings containing confidential information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the Submitting Party not more than three

weeks after conclusion of this proceeding.

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

Appendix A

RE: GE American Communications, Inc.,
File Nos. 169/173-SAT-P/LA-95; 54-SAT-AMEND-97
(IBFS File Nos. SAT-LOA-19950929-00132/00136;
SAT-AMD-19970237-00028)

ACKNOWLEDGEMENT 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 this Order and that I shall not disclose or use documents or information designated as "CONFIDENTIAL INFORMATION" or any information gained therefrom except as allowed by the 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 3 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 order.

Executed at _____ this ____ day of _____, 20__.

Signature

Title