

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

In the matter of)
)
Application of)
)
VISIONSTAR, INCORPORATED,)
Licensee)
)
SHANT HOVNANIAN,)
Transferor)
)
And)
)
ECHOSTAR VISIONSTAR CORPORATION,)
Transferee)
)
For Consent to Transfer of Control Over)
Authorization to Construct, Launch and Operate a)
Ka-Band Satellite System in the Fixed-Satellite)
Service at the 113° W.L. Orbital Location)

File No. SAT-T/C-20001215-00163

Order Adopting Protective Order

Adopted: September 21, 2001

Released: September 21, 2001

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Order, we require VisionStar, Incorporated ("VisionStar"), Shant Hovnanian and EchoStar VisionStar Corporation ("EchoStar", and collectively with VisionStar and Shant Hovnanian, the "Submitting Parties") to disclose information to Pegasus Development Corporation ("Pegasus"), TRW Inc. ("TRW") and DirectCom Networks, Inc. ("DirectCom") ("Reviewing Parties") 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. The Submitting Parties have filed for consent to transfer control of VisionStar's FSS Ka-Band satellite authorization to EchoStar.¹ Two parties, Pegasus and TRW, filed petitions to deny the

¹ Application for Consent to Transfer Control, File Nos. SAT-T/C-20001215-00163 and 200-SAT-P/LA-95 ("Application")

Application. DirectCom also filed comments in this proceeding.

3. On May 30, 2001, we requested that the Applicants provide additional information to support the Application.² VisionStar and EchoStar jointly filed a response on June 7, 2001, together with a request for confidential treatment.³ On June 11, 2001, the Applicants filed a letter correcting a numerical discrepancy in the *June 7 Letter* along with exhibits to VisionStar's November 21, 2000 contract with Lockheed Martin Corporation. On June 18, 2001, the Applicants provided a non-confidential version of the *June 7 Letter*. On June 28, the Applicants filed a revised version of the June 18, 2001 joint response. On July 10, 2001, Pegasus filed a request to inspect the *June 7 Letter* pursuant to the Freedom of Information Act ("FOIA").⁴ On August 10, 2001, the Submitting Parties filed an Application for Review and narrowed the scope of their confidentiality request, placing another redacted version of the *June 7 Letter* and several attachments in the public record.

III. DISCUSSION

4. We conclude that requiring the Submitting Parties to disclose these documents to the Reviewing Parties pursuant to the terms of a Protective Order will provide adequate protection to the confidential information included in these documents, without depriving the Reviewing Parties of a meaningful opportunity to comment, as required by the Administrative Procedure Act.⁵ Therefore, we require the Submitting Parties to provide copies of its *June 7 Letter* as amended on June 11, including Attachments B, C, D, and E and Attachment I, the unredacted construction contract, along with the exhibits submitted on June 11 to each Reviewing Party, once that Reviewing Party has executed the Protective Order attached to this Order.

5. In the 1998 Order, the Commission decided that, if the Commission issued a protective order, interested parties generally will be given at least 30 days from the date the protected material becomes available to file or supplement a petition to deny.⁶ Given that a substantial amount of information had been released by the Applicants and the relatively small amount of information is becoming available subject to this Order, the comment and response periods have been substantially shortened.

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that VisionStar, Incorporated, Shant Hovnanian and EchoStar VisionStar Corporation ARE REQUIRED to provide Pegasus Development Corporation, TRW, Inc. and/or DirectCom Networks., Inc an unredacted copy of its *June 7 Letter* with all attachments to that letter, as well as the June 11 corrections and attachments, under the terms of the Protective Order attached to this Order, once the Reviewing Party has executed that Protective Order.

7. It is further ordered that comments with respect to the information filed pursuant to this protective order must be filed on or before October 5, 2001 and responses must be filed on or before October 15, 2001.

² Letter from Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, FCC, to Pantelis Michalopoulos, Counsel for EchoStar VisionStar Corporation (dated May 30, 2001)

³ Letter from Pantelis Michalopoulos, Counsel for EchoStar VisionStar Corporation, to Thomas S. Tycz, Chief, Satellite and Radiocommunication Division, International Bureau, FCC (dated June 7, 2001) (*June 7 Letter*).

⁴ 5 U.S.C. § 522, *et. seq.*

⁵ Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GEN Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 ("*Confidential Information Policy Order*").

Confidential Information Policy Order, ¶ 34.

8. This Order is effective on release.



Donald Abelson
Chief
International Bureau

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For Consent to Transfer of Control Over
 Authorization to Construct, Launch and Operate a)
 Ka-Band Satellite System in the Fixed-Satellite)
 Service at the 113° W.L. Orbital Location)

PROTECTIVE ORDER

1. On June 7, 2001, in response to a request from Commission staff, VisionStar, Incorporated ("VisionStar"), Shant Hovnanian ("Mr. Hovnanian") and EchoStar VisionStar Corporation ("EchoStar" and collectively with VisionStar and Mr. Hovnanian. "Submitting Parties" and each of such, individually, a "Submitting Party") filed with the Commission a letter ("June 7 letter") with several attachments. The attachments consisted of a VisionStar Balance Sheet, copies of contracts between Mr. Hovnanian or VisionStar and EchoStar VisionStar or any related entity and a copy of VisionStar's November 21, 2000 contract with Lockheed Martin Corporation relating to construction of a Ka-band satellite system ("Contract"). Subsequently, on June 11, 2001, the Submitting Parties filed certain exhibits to the Contract. On June 18, 2001, TRW, Inc. ("TRW") filed an Opposition to the Parties' Request for Confidential Treatment, and on July 10, 2001, Pegasus Development Corporation ("Pegasus") submitted a request under the Freedom of Information Act ("FOIA") seeking the right to inspect the documents submitted by VisionStar and EchoStar on June 7, 2001. Any of TRW, Pegasus or DirectCom Networks, Inc. are sometimes referred to hereinafter as a "Reviewing Party." On June 28 and August 10, the Submitting Parties provided redacted versions of the June 7 letter along with several of the attachments, including the following: (1) The VisionStar balance sheet [Attachment A], (2) a letter agreement re: Real Property Lease [Attachment G], and (3) a Demand Note by and between VisionStar and Mr. Hovnanian [Attachment H]. An Option Agreement by and between EchoStar and Mr. Hovnanian [Attachment F] was filed with the Application and thus is already publicly released. Confidential treatment was requested for the remaining documents including:

- 1) VisionStar's November 21, 2000 contract with Lockheed Martin Corporation [Attachment I to the June 7 letter as well as exhibits to the VisionStar Contract with Lockheed Martin that were attached to June 11 letter];
- 2) Note dated November 7, 2000 by and between VisionStar Incorporated and EchoStar VisionStar Corporation [Attachment B to the June 7 letter];
- 3) Pledge and Security Agreement dated November 7, 2000 by and between VisionStar

and EchoStar VisionStar [Attachment C to the June 7 letter];

4) Limited Guarantee dated November 7, 2000 by Shant Hovnanian in favor of EchoStar VisionStar [Attachment D to the June 7 letter];

5) Stock Pledge and Security Agreement dated November 7, 2000 by and between Shant Hovnanian in favor of EchoStar VisionStar [Attachment E to the June 7 letter]; and

6) portion of the June 7 letter, as corrected on June 11,

This Protective Order is intended to facilitate and expedite the review of these documents, 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 these documents 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 Reviewing Party to any person. "Confidential Documents" shall mean the June 7, 2001 letter, including Attachments B, C, D, E, and I, with exhibits submitted on June 11, as well as the corrected letter dated June 11, 2001, as described above. Each of the Confidential Documents and their attachments shall bear the legend "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER – FILE NUMBER SAT-T/C-20001215-00163" The Submitting Party has indicated that it considers the non-public portions of these documents 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, below, 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. VisionStar, Mr. Hovnanian and EchoStar shall make available for review the Confidential Documents at the offices of either VisionStar's outside counsel, The Law Offices of Michael R. Gardner, P.C., 1150 Connecticut Avenue NW, Washington, D.C. 20036 or EchoStar's outside counsel, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, D.C. 20036.

4. *Access to Confidential Documents.* Persons described in paragraph 3, above, shall have the obligation to ensure that access to Confidential Documents is strictly limited as prescribed above 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 in the form attached hereto as Appendix A and filed with the Commission and with the Submitting Parties so that it is received by the Submitting Parties two business days prior to such person's reviewing or having access to any such Confidential Documents. A 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 one business day 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 disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from a 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 procedure:

- 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 File Nos. SAT-T/C-20001215-00163," and
- d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and the Submitting Parties. 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 a Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. A 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 Parties. 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 Parties, 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 relevant 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 relevant 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 Parties 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), authority delegated under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261 and is effective upon its adoption.

ATTACHMENT A**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