

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Intelsat North America LLC,)
PanAmSat Licensee Corp.,)
PanAmSat H-2 Licensee Corp.,)
and Intelsat New Dawn Company, Ltd.)
Annual Satellite Status Report)
)

FILED/ACCEPTED
JUN 30 2009
Federal Communications Commission
Office of the Secretary

REQUEST FOR CONFIDENTIAL TREATMENT

Intelsat North America LLC, PanAmSat Licensee Corp., PanAmSat H-2 Licensee Corp., and Intelsat New Dawn Company, Ltd. (collectively, "Intelsat") respectfully request that, pursuant to Sections 0.457 and 0.459 of the Commission's rules, the Commission withhold from public inspection and accord confidential treatment to portions of the enclosed Annual Satellite Status Report ("Report").¹ Specifically, Intelsat requests confidential treatment of Part 2 of the Report, which contains unscheduled transponder outage information, Part 3, which contains transponder utilization tables for all in-orbit satellites, and Part 4, which contains information on transponders not available for service or transponders not performing within specifications. Parts 2, 3 and 4 of the Report contain commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").²

Exemption 4 allows parties to withhold from public information "trade secrets and commercial or financial information obtained from any person and privileged or confidential-

¹ 47 C.F.R. §§ 0.457, 0.459.

² See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

categories of materials not routinely available for public inspection.”³ Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will have either of the following effects: (1) impairs the government’s ability to obtain necessary information in the future; or (2) causes substantial harm to the competitive position of the person from whom the information was obtained.⁴ Fixed satellite service space station operators routinely request confidential treatment of transponder outage and utilization information contained in their Reports and the Commission has withheld such information from public inspection.⁵

Section 0.457(d)(2) of the Commission’s rules allows persons submitting materials that they wish withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure.⁶ The requirements governing such requests are set forth in Section 0.459(b). In accordance with the specifications delineated in that rule, 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 of the information contained in Parts 2, 3 and 4 of its Report. Part 2 of the Report contains information about any unscheduled transponder outages lasting 30 minutes or more. Part 3 of the Report contains transponder utilization information for all of Intelsat’s in-orbit satellites. Part 4 of the Report contains information on transponders not

³ *Id.*

⁴ 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).

⁵ See, e.g., *Loral Space & Communications Ltd. Annual Status Report* (filed June 30, 2000); *PanAmSat Corporation Annual Status Report* (filed July 2, 2001).

⁶ 47 C.F.R. § 0.457(d)(2).

available for service or not operating within parameters. These parts contain commercially sensitive information that falls within Exemption 4 of FOIA.

2. Description of Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

Intelsat is filing the instant Report pursuant to Section 25.210(l)⁷, which requires all fixed satellite service space station operators to file on June 30 of each year a report with the International Bureau containing: (1) the status of satellite construction and anticipated launch dates; (2) a listing of any non-scheduled transponder outages lasting 30 minutes or more; and (3) a detailed description of transponder utilization of each in-orbit satellite.

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))

Parts 2, 3 and 4 of the Report contain sensitive commercial information that competitors could use to Intelsat's disadvantage. The courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings.⁸ 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."⁹ The transponder utilization table contains detailed information about leased transponder capacity and the amount of transponder capacity available for sale aboard each satellite. This is sales information, clearly within the definition of "commercial." Competitors

⁷ 47 C.F.R. § 25.210(l).

⁸ *See Bd. of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980)

⁹ *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, 14 FCC Rcd 1851, 1860 (1998) (Memorandum Opinion and Order) (citing *Public Citizen Health Research group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

could use this information, as well as information about any unscheduled transponder outages and malfunctioning transponders, to enhance their market position at Intelsat's expense.

Moreover, the transponder information meets both definitions of "confidential." First, a decision to not treat this information as confidential could affect the Commission's ability to obtain necessary information in the future. Although this information is required by Section 25.210(l), space station operators may be reluctant to provide such detailed transponder information if it is not accorded confidential treatment. Second, as explained in detail in Section 5, release of this transponder information could result in substantial competitive harm.

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 players in the geostationary, fixed satellite service market include SES Americom, Eutelsat and Telesat, among others. The presence of these 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))

As explained briefly in Section 3, release of the transponder utilization and transponder outage and malfunction reports could have a significant impact on Intelsat's commercial operations. If competitors or customers had access to this information, it could negatively affect Intelsat's future negotiations with potential and existing customers. Specifically, competitors and customers could use the transponder capacity and outage and malfunction information to negotiate more favorable leasing terms. In addition, competitors could use this information to develop market and business strategies to negatively affect Intelsat's future business plans.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

Intelsat limits access to the transponder capacity and outage and malfunction information to necessary personnel only. Also, Intelsat takes every precaution to ensure that this information is not released to the general public.

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 transponder utilization and outage and malfunction information available to the public and has not disclosed the information to any parties other than the FCC, except pursuant to a confidentiality agreement.

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 transponder utilization and outage and malfunction information from public inspection for fifteen years. The Commission generally licenses satellites for a fifteen-year term and this information remains commercially sensitive until a satellite is decommissioned.

Respectfully submitted,

Intelsat North America LLC,
PanAmSat Licensee Corp.,
PanAmSat H-2 Licensee Corp.,
and Intelsat New Dawn Company, Ltd.

By: */s/ Jennifer D. Hindin*

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**INTELSAT NORTH AMERICA LLC, PANAMSAT LICENSEE CORP.,
PANAMSAT H-2 LICENSEE CORP., AND INTELSAT NEW DAWN
COMPANY, LTD.**

**Part 1
Status of Satellite Construction**

Intelsat 14

The Intelsat 14 spacecraft is a C/Ku-band satellite with 40 C-band and 22 Ku-band channels under construction by Space Systems/Loral.

The spacecraft has completed all environment testing and is in final preparation for shipment to the Cape and launch in October 2009 on an Atlas V launch vehicle.

Intelsat 15

The Intelsat 15 spacecraft is a satellite with 22 Ku-band channels which was contracted with Orbital Sciences Corporation.

Spacecraft construction was completed in May 2009 and the spacecraft is currently in storage at the Orbital Sciences Corporation Dulles facility awaiting pairing with a launch vehicle.

The satellite is expected to be launched in the fourth quarter of 2009 on a Land Launch vehicle.

Intelsat 16

In February 2007, Intelsat contracted with Orbital Sciences Corporation for the construction of the Intelsat 16 spacecraft. The spacecraft was originally designed as a replacement to Intelsat 11 (Ku-band payload only) in the case of a failure of the IS 11 spacecraft during launch or early commissioning. Following the successful launch of Intelsat 11 in October 2007, Intelsat contracted with Orbital Sciences to modify the satellite payload to carry 24 active Ku-band transponders.

Integration of the communication module is well underway and will be completed in June 2009. Spacecraft level thermal vacuum tests and dynamics tests are currently planned for the August to October 2009 timeframe.

The satellite is expected to be completed in the fourth quarter of 2009 with a launch in late 2009 or early 2010 on a Proton launch vehicle.

Intelsat 17

The Intelsat 17 spacecraft is a C/Ku-band satellite with 24 C-band and 25 Ku-band channels under construction by Space Systems/Loral. The System Preliminary Design Review was successfully held in December 2008 and the System Critical Design Review is planned for June 2009.

Bus and payload panels integration will take place in the second half of 2009. Single line flow integration and testing is planned for 2010.

Spacecraft construction completion is currently expected for fourth quarter 2010 with a launch on Sea Launch in late 2010 or early 2011.

New Dawn

The New Dawn spacecraft is a C/Ku-band satellite with 14 C-band and 16 Ku-band channels under construction by Orbital Sciences Corporation. The System Preliminary Design Review was successfully held in December 2008 and the System Critical Design Review is planned for August 2009.

Bus and payload panels integration will take place in the second half of 2009. Single line flow integration and testing is planned for 2010.

Spacecraft construction completion is currently expected for third quarter 2010, with a launch in the fourth quarter of 2010 on an Ariane launch vehicle.

Intelsat 18

The Intelsat 18 spacecraft is a C/Ku-band satellite with 24 C-band and 12 Ku-band channels under construction by Orbital Sciences Corporation. The System Preliminary Design Review was successfully held in December 2008 and the System Critical Design Review is planned for August 2009.

Bus and payload panels integration will start in the fourth quarter of 2009 and be completed in the first quarter of 2010. Single line flow integration and testing is planned for the second and third quarter of 2010.

Spacecraft construction completion is currently expected for fourth quarter 2010, with a launch in the first quarter of 2011.

Intelsat 22

The Intelsat 22 spacecraft is a C/Ku/UHF-band satellite with 24 C-band, 18 Ku-band and 18 UHF channels under construction by Boeing Satellite Systems. The System Preliminary Design Review is planned for October 2009.

The spacecraft construction will take place over the next two and a half years, with completion planned for the end of 2011. The Intelsat 22 spacecraft will be launched in the first quarter of 2012.

Business Proprietary Information Deleted

PUBLIC VERSION

Part 2
Non-Scheduled Transponder Outages

Business Proprietary Information Deleted

PUBLIC VERSION

Part 3
Transponder Utilization

Business Proprietary Information Deleted

PUBLIC VERSION

Part 4
Transponders Not Available for Service
or
Not Performing to Specification

Business Proprietary Information Deleted