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**B. The Exemption in Section IV.B.(3) Should Be Stricken or at Least Modified**

Section IV.B.(3) permits Northrop Grumman to "refuse to supply a Payload to any Satellite System Prime if the number and/or burden of Satellite System Primes seeking the benefit of this Section becomes unreasonably large." If Northrop Grumman invokes this provision, it is to notify the Compliance Officer, who makes a recommendation to the Air Force Secretary, who "shall have the sole discretion to decide with whom, and on what terms, Northrop enters into such teaming agreements."

We know of no legal basis to exempt Northrop Grumman from its non-discriminatory payload supply requirements simply because of the number of potential prime contractors. If, as the CIS acknowledges, Northrop Grumman is one of few suppliers of radar and EO/IR payloads, competition will be lessened on satellite products unless Northrop Grumman is obligated to supply that payload to competing primes. (An entity which is deemed an "essential facility" is obligated to serve all potential customers, regardless of their number.)<sup>2</sup>

The Consent Order should be revised to (1) make clear the precise (and we believe very limited) circumstances in which it may be applicable; and (2) provide Lockheed Martin and other prime contractors notice whenever it is being invoked, to afford us/them the opportunity to be heard by the Compliance Officer.

**C. The Definition of "Discriminate" Should Be Stricken or Clarified**

Lockheed Martin submits that the definition of "discriminate" set forth in Section II. N. of the Consent Order is unnecessary - at least as applied to §IV.B. - and could create "loopholes" that would enable Northrop Grumman to evade the key requirements of the Order.<sup>3</sup>

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<sup>2</sup> See MCI Communications Corp. v. AT&T, 708 F.2d 1081 (7th Cir.) cert denied, 464 U.S. 891 (1983).

<sup>3</sup> As a potentially competing prime, Lockheed Martin's comments focus on Section IV.B. of the Order (and not on Section IV.A., which applies to procurements where Northrop Grumman has already been selected as the prime.) For the reasons discussed herein, the phrase "for any reason other than the competitive merits" should not appear in any definition of "Discriminate" as that term is used in Section IV.B. Lockheed Martin takes no position with respect to whether the term "Discriminate" needs to be defined with respect to Section IV.A. and, if so, whether the proposed definition of that term is appropriate as applied to that Section.