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May 24, 2021

Via Experimental Licensing System (ELS)

Experimental Licensing Branch
Office of Engineering & Technology
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

**Re: Request for Confidential Treatment, ELS File No. 0094-EX-CM-2021;
Request for Modification of Call Sign W12XXG, ELS File No. 0188-EX-CR-2021.**

To Whom It May Concern:

Pursuant to the provisions of Sections 0.457 and 0.459 of the Commission's rules governing the submission of confidential materials,¹ 3DB Communication Inc. ("3DB") respectfully requests that Exhibit 1 ("Amended Narrative in Support of Modification"), including Appendix A, be afforded confidential treatment and not be placed in the Commission's public files. 3DB is providing this information as part of its application to modify Call Sign W12XXG, ELS File No. 0188-EX-CR-2021, and in response to the Commission's email correspondence dated May 19, 2021.²

The information in Exhibit 1 qualifies as "commercial or financial information" that "would customarily be guarded from competitors,"³ regardless of whether such materials are protected from disclosure by a privilege. The information is closely held by 3DB, is not available to the public, and is not revealed except under cover of confidentiality.⁴ 3DB therefore requests that the Commission "not permit the inspection" of this exhibit.⁵

In support of this request and pursuant to 47 C.F.R. § 0.459(b), 3DB makes its request for confidential treatment based on the following information:

1. 3DB seeks confidential treatment for the entire scope, specifications, and objectives of the experiments to be conducted under this modification application, as described in Exhibit 1.

¹ 47 C.F.R. §§ 0.457, 0.459.

² See ELS File No. 0094-EX-CM-2021.

³ See, e.g., *James A. Kay, Jr.*, Decision, 17 FCC Rcd 1834, ¶ 23 (2002) (withholding such information from public inspection).

⁴ See 47 C.F.R. § 0.457(d); *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) ("[W]e conclude that financial or commercial information provided to the Government on a voluntary basis is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.") (*Critical Mass Energy Project*).

⁵ 47 C.F.R. § 0.451.

2. The confidential information in Exhibit 1 is being submitted to the Commission to assist in the review of the attached modification application.
3. The information regarding 3DB's proposed experiments and equipment in Exhibit 1 is privileged commercial information and is restricted solely to 3DB.
4. The market for high frequency communications is innovative, fast-developing, and competitive. 3DB's business developing communication modes and equipment that enhance the performance elements of high frequency communications is subject to competition from other device, software, and network developers.
5. Due to the competitive nature of 3DB's business, disclosure of information about its test plans would result in substantial competitive harm to 3DB. Knowledge of 3DB's technologies and specifications of its testing plan would allow competitors to infer or confirm information about 3DB's technical and business strategies, of which they are currently unaware or uncertain, and could jeopardize 3DB's competitive position.
6. 3DB strictly limits access to information about the technologies and test plans described in Exhibit 1.
7. Information about 3DB's technologies and test plans disclosed in Exhibit 1 is not publicly available.
8. 3DB requests that the proprietary information be withheld from disclosure for an indefinite period, at a minimum the entire duration of the experimental license.
9. The timing and progress of 3DB's product research and development process, and its ability to maintain the confidentiality of its test plans, will substantially contribute to the success of its product launch. The premature disclosure of 3DB's innovative technologies and test plan, as described in Exhibit 1, would harm the competitive position of 3DB.

Additionally, 3DB notes that a denial of its request would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future, hindering the agency's application review process. Encouraging cooperation with the government by parties having information useful to officials and enhancing a government agency's ability to obtain confidential information are the legislative intent for developing exemptions from the Freedom of Information Act.⁶ The U.S. Court of Appeals for the D.C. Circuit has recognized a "private interest in preserving the confidentiality of information that is provided to the Government on a voluntary basis."⁷

3DB is submitting Exhibit 1, which provides information regarding the specifications of the experiments to be conducted under this modification application. 3DB requests that the Commission return these submissions if its request for confidentiality is denied.⁸

⁶ See *Critical Mass Energy Project*, 975 F.2d at 878 ("Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government's] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.") ("*Critical Mass Energy Project*"); see also *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 147-48 (D.C. Cir. 2001).

⁷ *Critical Mass Energy Project*, 975 F.2d at 879.

⁸ 47 C.F.R. § 0.459(e).

Please direct any questions to the undersigned.

Sincerely,

/s/ Trey Hanbury

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