

May 11, 2017

Via Electronic Filing

Experimental Licensing Branch
Office of Engineering and Technology
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Application of 3DB Communication Inc.
File No. [Insert]
Request for Confidential Treatment**

To Whom It May Concern:

3DB Communication Inc. ("3DB"), pursuant to 5 U.S.C. § 552 and 47 C.F.R. § 0.459, hereby requests that a portion of the above-referenced application (the "Application") for an experimental license be treated as confidential and not subject to public inspection. Specifically, the information contained in Exhibit A to the applications constitutes confidential proprietary information that, if subject to public disclosure, would cause significant commercial, economic, and competitive harm to 3DB and its affiliates. 3DB is not seeking confidential treatment of information contained in either the FCC Form 442 or the stop buzzer contact information provided in Exhibit B. As demonstrated below, 3DB's request satisfies the standards for grant of confidential treatment of Exhibit A.

In accordance with 47 C.F.R. § 0.459(b), 3DB is providing the following information in support of this request for confidential treatment:

1. Identification of specific information for which confidential treatment is sought:

3DB seeks confidential treatment of the information contained in Exhibit A of the Application (the "Confidential Information"). 3DB does not seek to withhold from public inspection any information necessary for interference mitigation, including the applicant name, contact information, locations, frequencies and power levels.

2. Identification of the Commission proceeding in which the information was submitted or a description of circumstances giving rise to the submission:

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3DB is submitting this information as part of a request for an experimental license to conduct the testing described in Attachment 1 of the Application.

3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged:

The Confidential Information has significant commercial value, and the tests and experiments described therein include trade secrets.¹ Specifically, 3DB's tests and experiments, including the frequencies and test equipment, will be used to develop innovative services and technologies. The information for which confidential treatment is sought concerns 3DB's private business and operations and "would customarily be guarded from competitors." See 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2). Such proprietary and confidential information may be withheld from public disclosure under the Freedom of Information Act ("FOIA") Exemption 4.

4. Explanation of the degree to which the information concerns a service that is subject to competition:

The services and technologies that are subject to the Application have not yet been fully developed but are expected to lead to material developments in markets subject to competition. The information for which confidential treatment is sought concerns 3DB's private business and operations and "would customarily be guarded from competitors." See 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2).

5. Explanation of how disclosure of the information could result in substantial competitive harm:

The Confidential Information is commercially sensitive. Its public release would provide insight into 3DB's intended innovative services and technologies, which would potentially jeopardize the business plans and strategies of 3DB and its affiliates. Public disclosure of the Confidential Information would also diminish the value of 3DB's efforts by unfairly enabling others to appropriate 3DB's efforts and develop similar services and/or technologies. The D.C. Circuit has found that parties do not have to "show actual competitive harm" to justify confidential treatment. Rather, "[a]ctual competition and the likelihood of substantial competitive injury" is sufficient to bring commercial information within the realm of confidentiality." *Public Citizen*

¹ See *Public Citizen Health Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (defining a trade secret for purposes of the Freedom of Information Act as a "secret, commercially valuable... process or device that is used for the making... of trade commodities and that can be said to be the end product of either innovation or substantial effort."); see also *In the Matter of Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd. 12406 ¶ 4 (1996).

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Health Research Group, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure:

3DB has taken steps to keep confidential the Confidential Information, including limiting the number of people involved in the tests and experiments and requiring all third parties involved to execute non-disclosure agreements.

7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:

The Confidential Information is not available to the public and has only been disclosed to third parties pursuant to non-disclosure agreements. There has been no prior disclosure that 3DB is seeking the requested authorization or of the specifics regarding the Application. 3DB voluntarily provides the information at this time with the expectation that it will be treated confidentially in accordance with the Commission's rules. See *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992) (commercial information provided 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.").

8. Justification of the period during which the submitting party asserts that martial should not be available for public disclosure:

Given the competitive nature of the marketplace, the Confidential Information should be withheld from public inspection indefinitely in order to protect the evolving business plans and strategies of 3DB and its affiliates.

9. Any other information that the party seeking confidential treatment believed may be useful in assessing whether its request for confidentiality should be granted:

The public interest would not be served by making publically available the Confidential Information. Those portions of the Application relating to the potential for harmful interference and the stop buzzer contact to be contacted should interference occur are not included within the Confidential Information. Accordingly, public review of the Confidential Information would not be beneficial or necessary. The information for which confidential treatment is requested falls within FOIA Exemption 4, which provides a statutory basis for withholding from public inspection "matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

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Consistent with 47 C.F.R. § 0.459(d)(1), 3DB requests notification if release of the information subject to this request is requested pursuant to the FOIA or otherwise, so that 3DB may have an opportunity to oppose grant of any such request.

Sincerely,

/s/ Patrick R Halley
Patrick R. Halley