



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

November 17, 2017

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street N.W.
Washington, DC 20554

Re: Request for Confidential Treatment, Experimental License File No. 0841-EX-CN-2017

Dear Ms. Dortch:

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 the entire scope of its test plan included in the attached application be afforded confidential treatment and not be placed in the Commission's public files. 3DB is providing this information to the Commission in a Confidential Narrative Statement to accompany its application for an Experimental License, File No. 0841-EX-CN-2017. The confidential information qualifies as "commercial or financial information" that "would customarily be guarded from competitors" regardless of whether or not such materials are protected from disclosure by a privilege, is closely held by 3DB, is not available to the public, and not revealed except under cover of confidentiality.² 3DB therefore requests that the Commission "not permit the inspection" of these materials.³

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 application.

¹ 47 C.F.R. §§ 0.457, 0.459.

² 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.").

³ 47 C.F.R. § 0.451.

2. The confidential information is being submitted to the Commission to assist in the review of the attached experimental license application.

3. The information regarding 3DB's proposed experiments 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 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 business strategy of which they are currently unaware or uncertain, and could jeopardize the competitive position of 3DB.

6. 3DB strictly limits information about its technologies and test plans to 3DB employees.

7. Information about 3DB's technologies and test plans 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 high frequency communication market is fast-growing and competitive. 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 test plan information 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.⁴ 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."⁵

3DB is submitting a Confidential Narrative Statement providing information regarding the specifications of the experiments to be conducted under this application. 3DB requests that the

⁴ See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) ("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."); see also *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 147-48 (D.C. Cir. 2001).

⁵ *Critical Mass Energy Project*, 975 F.2d at 879.

Marlene H. Dortch
November 17, 2017

Commission return this submission if its request for confidentiality is denied.⁶ Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Sarah K. Leggin

Sarah K. Leggin
Counsel to 3DB Communication Inc.

⁶ See 47 C.F.R. § 0.459(e).