

## REQUEST FOR CONFIDENTIAL TREATMENT

Aeronet Global Communications Inc. (“Aeronet”) respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules,<sup>1</sup> the Commission withhold from public inspection and afford confidential treatment to the material set forth in the attached Experimental License Confidential Exhibit (“Confidential Exhibit”), as outlined further below. The submitted Confidential Exhibit contains material that is sensitive from a commercial, competitive, and financial perspective. Aeronet would not reveal this information to the public, to its competitors, or to other third parties in the normal course of business.

Section 552(b)(4) of the Freedom of Information Act (“FOIA Exemption 4”) permits an agency to withhold from public disclosure any information that qualifies as “trade secrets and commercial or financial information obtained from a person and privileged or confidential.”<sup>2</sup> Section 0.457(d)(2) of the Commission’s Rules allows persons to file a request for non-disclosure when submitting materials that they wish withheld from public inspection.<sup>3</sup> In addition, because this is a voluntary submission, if the Commission denies this request for confidential treatment, Aeronet requests for its Confidential Exhibit to be returned.

In accordance with Section 0.459 of the Commission’s rules,<sup>4</sup> Aeronet submits the following:

**1. Identification of the Specific Information for Which Confidential Treatment Is Sought**

Aeronet seeks confidential treatment of the attached Confidential Exhibit.

**2. Description of the Circumstances Giving Rise to the Submission**

Aeronet is submitting the Confidential Exhibit pursuant to the FCC’s experimental licensing rules to secure an experimental license for testing proprietary Aeronet technology.

**3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged**

The information described above is protected from disclosure because the Confidential Exhibit contains proprietary information concerning Aeronet’s experiments, technology, business operations, and customer relationships that could be detrimental to Aeronet if they were made public. This information constitutes highly sensitive commercial information “which would customarily be guarded from competitors.” 47 C.F.R. § 0.457. The Commission has recognized that, for purposes of Exemption 4, “records are ‘commercial’ as long as the submitter

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<sup>1</sup> 47 C.F.R. §§ 0.457, 0.459.

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 47 C.F.R. § 0.457(d)(2).

<sup>4</sup> 47 C.F.R. § 0.459(b).

has a commercial interest in them.”<sup>5</sup> In this regard, the Confidential Exhibit describing Aeronet’s proposed network, capabilities, and experimental program, constitutes sensitive commercial information, with significant commercial value, which may be withheld under FOIA Exemption 4 and the Commission’s rules.

**4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition**

Aeronet’s submission contains proprietary information about Aeronet’s business and technology that, if publicly disclosed, could put Aeronet at a competitive disadvantage in the highly competitive wireless broadband space.

**5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm**

Providing competitors or the public with the information contained in Aeronet’s submission would expose commercially sensitive information to a highly competitive sector of the technology industry. The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment.<sup>6</sup> Rather, “[a]ctual competition and the likelihood of substantial competitive injury’ is sufficient to bring commercial information within the realm of confidentiality.”<sup>7</sup> Given the competitive nature of the broadband industry, the innovative nature of Aeronet’s technology, and the sensitive nature of its business and customer relationships, confidential treatment is appropriate to preserve against substantial competitive harm.

**6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure**

Aeronet has not publicly disclosed the contents of Confidential Exhibit and, during the normal course of business, treats the information as confidential.

**7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties**

Aeronet has not made the information contained in the Confidential Exhibit publicly available.

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<sup>5</sup> *Robert J. Butler*, Memorandum Opinion and Order, 6 FCC Rcd 5414 ¶ 12 (1991) (citing *Pub. Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *Am. Airlines v. Nat’l Mediation Bd.*, 588 F.2d 863, 868 (2d Cir. 1978)).

<sup>6</sup> *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 (quoting *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

<sup>7</sup> *Id.*

**8. Justification of the Period during Which the Submitting Party Asserts That Material Should Not Be Available for Public Disclosure**

Given the highly proprietary and non-public nature of the information in the Confidential Exhibit, Aeronet requests that confidential treatment apply indefinitely, since it is not possible to determine at this time any specific date by which the information could be disclosed without risk of harm.

**9. Any Other Information That the Party Seeking Confidential Treatment Believes May Be Useful in Assessing Whether Its Request for Confidentiality Should Be Granted**

The Confidential Exhibit subject to this request also would qualify for Exemption 4 of the Freedom of Information Act. Exemption 4 protects information that is (i) commercial or financial; (ii) obtained by a person outside of the government; and (iii) privileged or confidential.<sup>8</sup>

If a request for disclosure is made, please provide Aeronet with sufficient notice prior to disclosure so that it may pursue remedies to preserve confidentiality.

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<sup>8</sup> 5 U.S.C. § 552(b)(4).