



November 30, 2016

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Request for Confidential Treatment of Information
Application for Experimental Special Temporary Authorization (“STA”)
File No. 1618-EX-ST-2016

Dear Ms. Dortch:

Ericsson respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission’s rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment of the antenna parameters and diagrams contained in the above-referenced STA application, including the STA Form and Exhibit 1. This information qualifies as trade secrets and commercial information that falls within Exemption 4 of the Freedom of Information Act (“FOIA”).¹ It is not necessary to provide this information to the public for purposes of interference mitigation as the application seeks authorization to operate on government spectrum and NTIA and affected government users will conduct their own review of the full unredacted application

Exemption 4 of FOIA provides that the public disclosure requirement of the statute “does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.”² Ericsson is providing the trade secrets and commercial information “of a kind that would not customarily be released to the public” because such disclosure is necessary to obtain an STA. Therefore, this information is “confidential” under Exemption 4 of FOIA.³ Moreover, Ericsson would suffer substantial competitive harm if the antenna information for our research program were disclosed.⁴

¹ 5 U.S.C. § 552(b)(4).

² *Id.*

³ *See Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

⁴ *See National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

In support of this request and pursuant to Section 0.459(b) of the Commission's rules,⁵ Ericsson hereby states as follows:

1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT⁶

Ericsson seeks confidential treatment of the antenna parameters and diagrams for the experiment contained in both the STA Form and Exhibit 1. Ericsson also is submitting a public redacted version of Exhibit 1.

2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION⁷

Ericsson is submitting an application for an experimental STA to conduct an exhibition at the Consumer Electronics Show 2017. While there is obviously a public component to the exhibit, this specific information is not publicly known and will not be publicly disclosed.

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED⁸

The information for which Ericsson seeks confidential treatment contains sensitive trade secrets and commercial information "which would customarily be guarded from competitors."⁹ Ericsson has invested finances, planning and expertise into developing this "secret commercially valuable plan" that is the program of research into 5G, and we have previously been granted confidential treatment for antenna information when applying for STAs to demo 5G.¹⁰ Ericsson will use this research to develop 5G products. The antenna parameters and diagrams are at the core of what and how we will research and it is not information we would disclose outside of Ericsson except for the need to obtain the STA.

⁵ 47 C.F.R. § 0.459(b).

⁶ 47 C.F.R. § 0.459(b)(1).

⁷ 47 C.F.R. § 0.459(b)(2).

⁸ 47 C.F.R. § 0.459(b)(3).

⁹ 47 C.F.R. § 0.457.

¹⁰ *See, e.g.*, File Nos. 1253-EX-ST-2015, 0808-EX-ST-2015, 0806-EX-ST-2015, and 1253-EX-ST-2015.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION¹¹

Developing network products is the core of Ericsson's business and 5G is the next generation of network technology, which is still in the research and development stage. Ericsson faces competition in the US and globally to develop the best 5G products.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM¹²

The release of the plan we are using to research and develop 5G products could result in competitive harm to Ericsson to the extent it became available to competitors. Disclosing the information would enable competitors to use and benefit from the investment Ericsson has made to develop the 5G program of research and to shortcut their own research processes. It would unjustly benefit our competitors to gain this insight into our research.

6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE¹³

The information has been kept within Ericsson and disclosed only to personnel working on the 5G research, except as discussed in the next section. We are submitting a public redacted copy of Exhibit 1 to keep the information confidential.

7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES¹⁴

The information is not available to the public. As referenced above, this information antenna information has been disclosed to the FCC and NTIA each time we have applied for an experimental license to conduct 5G research. The FCC has granted confidential treatment to the information each time. To the extent this information has been shared with customer partners as we conduct 5G research, it has been done under a nondisclosure agreement. Accordingly, Ericsson requests that the Commission accord confidential treatment of the information covered by this request under Sections 0.457 and 0.459 of the Commission's rules.

¹¹ 47 C.F.R. § 0.459(b)(4).

¹² 47 C.F.R. § 0.459(b)(5).

¹³ 47 C.F.R. § 0.459(b)(6).

¹⁴ 47 C.F.R. § 0.459(b)(7).

8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE¹⁵

Ericsson requests that the antenna and output power information be treated as confidential for a period of 5 years. We request this time period so that competitors cannot benefit from our research as the industry develops 5G technology. By the end of 5 years, research into 5G should have developed to an extent where disclosing this information to the public would not be a competitive risk.

9. OTHER INFORMATION THAT ERICSSON BELIEVES MAY BE USEFUL IN ASSESSING WHETHER ITS REQUEST FOR CONFIDENTIALITY SHOULD BE GRANTED¹⁶

Granting this request for confidentiality is consistent with a policy of supporting innovation and the investment necessary to conduct research.

Respectfully submitted,

/s/ Kelley A. Shields
Kelley A. Shields
Director, Government Affairs and Public Policy

¹⁵ 47 C.F.R. § 0.459(b)(8).

¹⁶ 47 C.F.R. § 0.459(b)(9).