

September 16, 2015

VIA ELECTRONIC FILING

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

Re: Request for Confidential Treatment, File No. 1020-EX-ST-2015

Dear Ms. Dortch:

Pursuant to the provisions of Sections 0.457 and 0.459 of the Commission's rules governing submission of confidential materials,¹ FCL-Tech, Inc. ("FCL") respectfully requests that the portions of the attached application identifying the manufacturer of its antennas be afforded confidential treatment and not be placed in the Commission's public files. FCL is providing this information to the Commission in a confidential exhibit to accompany its application for Special Temporary Authority, File No. 1020-EX-ST-2015. 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.² FCL 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), FCL hereby states as follows:

1. The confidential information constitutes commercial information that has not been made public by FCL, is not available to FCL's competitors, and pertains to product specifications in the highly competitive dispenser market. No public statements by FCL or any other party has been released about the antennae and work in this spectrum or in this space. FCL is working under a Non-Disclosure Agreement ("NDA") and filing the application publicly would violate this

¹ *Id.* §§ 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.

agreement. Disclosure of this work could compromise the relationship between FCL and its vendors by undermining the NDA process and potentially notifying a vendor's competition about its activities in this area.

2. The confidential information provided contains FCL vendor information. Currently, other competitors in the industry are not aware of this activity with this spectrum and the requested bandwidth. Competitors' discovery of this information would alert them to this activity, undermining the confidentiality of their business plan.
3. The confidential information is being submitted to the Commission to assist in the review of the attached experimental license application.
4. FCL requests that the confidential information be withheld from disclosure for an indefinite period. Because of FCL's NDA as well as the competitive nature of FCL's business, disclosure of this information at any time could jeopardize the competitive position of both FCL and any vendor it works with.
5. Finally, FCL notes that a denial of its request would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future, making review of applications more problematic. The ability of a government agency to continually obtain confidential information was 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

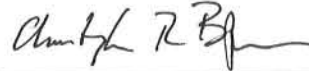
⁴ See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) ("Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government's] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.").

⁵ *Id.* at 879.

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FCL is also submitting a confidential exhibit providing this information. FCL requests that the Commission return this submission if its request for confidentiality is denied.⁶

Respectfully submitted,



Christopher Bjornson
Counsel to FCL Tech, Inc.

⁶ See 47 C.F.R. § 0.459(e).