

October 3, 2016

By ELECTRONIC FILING

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

Re: Request for Confidential Treatment, File No. 1440-EX-ST-2016

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 explanation, and vendor portions of the attached application 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. 1440-EX-ST-2016. 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 FCL, is not available to the public, and not revealed except under cover of confidentiality.² FCL therefore requests that the Commission "not permit the inspection" of these materials.³

The information FCL seeks to designate as confidential includes information regarding the vendors of its equipment, as well as the information about its test plans that does not affect the ability of the Commission and local frequency coordinators to identify potential interference issues. Disclosure of this information would disadvantage FCL's competitiveness with regard to its communications services.

In support of this request and pursuant to 47 C.F.R. § 0.459(b), FCL hereby states as follows:

1. Knowledge of FCL's test plan would allow competitors to infer or confirm information about FCL's business strategy of which they are currently unaware.

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. FCL requests that the confidential information be withheld from disclosure for an indefinite period. Because of the competitive nature of FCL's business, disclosure of this information could jeopardize the competitive position of both FCL and any vendor it works with.
4. 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

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 Please contact the undersigned at 202-415-9562 if you have any questions.

Respectfully submitted,

/s/ Christopher Bjornson
Christopher Bjornson
Counsel to FCL Tech, Inc.

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.

⁶ See 47 C.F.R. § 0.459(e).