

REQUEST FOR WITHHOLDING INFORMATION FROM ROUTINE PUBLIC DISCLOSURE

Intel Corporation (“Intel”) requests pursuant to Section 0.459 of the Commission’s Rules that certain materials included within the instant application for special temporary authority be withheld from routine public disclosure. In support of this request, Intel provides the following information:

Identification of materials to be withheld from routine public disclosure (§0.459(b)(1)): Intel requests that all of the information contained in Attachment 1 to the application be withheld from routine public disclosure. Intel does not seek to withhold from public inspection any information necessary for interference mitigation, including the applicant name, contact information, locations, frequencies and power levels.

Identification of the Commission proceeding in which the information was submitted (§0.459(b)(2)): The material has been submitted in connection with the Intel application for special temporary authority that has been assigned File No. 0094-EX-ST-2016.

Explanation of the degree to which the information is commercial or financial, or contains a trade secret, or is privileged (§0.459(b)(3)): The market for the technology that is the subject of the request for special temporary authority is a highly competitive one, with numerous vendors battling for the business of customers through, among other things, the frequent introduction of new devices with innovative features. Were Intel’s competitors to learn at this time the specific facts set forth in Attachment 1 to the application, it could deprive Intel of the marketplace benefits it otherwise will achieve by virtue of showcasing an innovative use of Intel’s Curie module before its competitors have devised and implemented similar technologies. That, in turn, would have an adverse impact on Intel’s competitive standing with the prospective customer base to which the Curie module will be marketed. Intel closely guards the information in Attachment 1 against disclosure to competitors and the public. The information for which confidential treatment is sought concerns Intel’s private business and operations and “would customarily be guarded from competitors.” *See* 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2). Such proprietary and confidential information may be withheld from public disclosure under the Freedom of Information Act (“FOIA”) Exemption 4.

In addition, the nature of the event described in Attachment 1 is highly confidential and has not been disclosed publicly by the producers of the event. The release of such details prior to the event would undoubtedly cause harm to the performers and producers, as the performance/production value and dramatic effect of the performance and the incorporation of Intel’s technology will largely be driven by the element of surprise.

Explanation of the degree to which the information concerns a service that is subject to competition (§0.459(b)(4)): As discussed above, the market for wireless technologies such as those that are the subject of the request for special temporary authority is a highly competitive one. The information for which confidential treatment is sought concerns

Intel's private business and operations and "would customarily be guarded from competitors." See 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2).

Explanation of how disclosure of the information could result in substantial competitive harm (§0.459(b)(5)): Public disclosure of the commercially-sensitive, proprietary, and confidential operational and technical information set forth in Attachment 1 would cause competitive harm to Intel. The wireless industry is highly competitive, and industry participants always are interested in learning information about device prototypes of others, as well as applicable development and testing schedules in order to gain a competitive advantage. As noted above, were Intel's competitors to become aware of the facts set forth in Attachment 1 to the application at this time, it could deprive Intel of the marketplace benefit it otherwise will achieve by virtue of showcasing this particular technology before other competitors and thus have an adverse impact on Intel's competitive standing. The D.C. Circuit has found that parties do not have to "show actual competitive harm" to justify confidential treatment. Rather, "[a]ctual competition and the likelihood of substantial competitive injury" is sufficient to bring commercial information within the realm of confidentiality." *Public Citizen Health Research Group*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

Likewise, public disclosure of the details of the described performance would result in competitive harm to the performers, producers and Intel, as it would decrease the production value of the instant performance and would serve as a disincentive to incorporate cutting edge technologies in future performances.

Identification of any measures taken by the submitting party to prevent unauthorized disclosure (§0.459(b)(6)): Intel will not be disclosing to the public that the performer will be incorporating Intel's Curie module in the performance, or that it has sought this special temporary authority for such use. Those Intel employees that are aware of the performance have been instructed on the need to maintain confidentiality regarding the nature and source of the device to be used and the nature of the performance itself, and all Intel contractors and partners that become privy to such information are subject to confidentiality agreements.

Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties (§0.459(b)(7)): Intel has not made the information subject to this request available to the public and does not routinely disclose such commercially sensitive information to the public or to third parties, and has established procedures to protect such information internally. Some of the details regarding the prototype device that is the subject of the application have been disclosed to a very select group of potential partners, but in all cases pursuant to non-disclosure agreements. There has been no prior disclosure that Intel is seeking this special temporary authority or of the specifics regarding the performance. Intel voluntarily provides the information at this time with the expectation that it will be treated confidentially in accordance with the Commission's rules. See *Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992) (commercial information provided 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.”).

Justification of the period during which the submitting party asserts that material should not be available for public disclosure (§0.459(b)(8)): Given the competitive nature of the marketplace, disclosure that Intel is about to showcase an innovative new use of its technology as referenced in Attachment 1 would harm Intel’s competitive position. Likewise, disclosure of the details of the performance would hurt the producers, as it would take away the element of drama and surprise necessary for such artistic performances. As such, Intel requests that the information be held confidential until after the public broadcast of the show on February 15th.

Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted (§0.459(b)(9)): The information for which confidential treatment is requested falls within FOIA Exemption 4, which provides a statutory basis for withholding from public inspection “matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4).

Consistent with 47 C.F.R. § 0.459(d)(1), Intel requests notification if release of the information subject to this request is requested pursuant to the FOIA or otherwise, so that Intel may have an opportunity to oppose grant of any such request.