



March 21, 2019

To: Behnam Ghaffari
Behnam.Ghaffari@fcc.gov

From: Luis Méndez del Nido
luis.b.mendez@libertypr.com

Applicant: Liberty Cablevision of Puerto Rico LLC

File Number: 0082-EX-CN-2019

Correspondence Reference Number: 46278

Date of Original E-mail: February 22, 2019

Dear Mr. Ghaffari,

As you may know, on February 19, 2019, Liberty Cablevision of Puerto Rico LLC (“Liberty”) requested an experimental license from the Federal Communications Commission’s (“FCC”) Office of Engineering and Technology (“OET”). As part of its experimental license application, Liberty requested that some of the information provided to the OET remain confidential, pursuant to Sections 0.457 and 0.459 of the Commission’s rules.

As a response to this request, on February 22, 2019—in Correspondence Reference Number 46278—you required that Liberty submit a confidentiality request in a Q&A format, individually addressing the nine (9) elements outlined in CFR 47, Part 0.459(b)(“Liberty’s Confidentiality Request”). As such, Liberty’s Confidentiality Request is included hereto as **Exhibit A**.

I hope this satisfies your February 22, 2019 request and, of course, do not hesitate to contact Liberty were you to need additional information.

Best,

/s/Luis Mendez del Nido
Luis Méndez del Nido
Associate Counsel
Liberty Cablevision of Puerto Rico LLC

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From: Luis Méndez del Nido
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Applicant: Liberty Cablevision of Puerto Rico LLC

File Number: 0082-EX-CN-2019

Re: Liberty Cablevision of Puerto Rico LLC's Confidentiality Request

Dear Mr. Ghaffari,

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, Liberty Cablevision of Puerto Rico LLC ("Liberty") hereby requests confidential treatment of certain confidential business information contained in the attachment to its 3.5 GHz Experimental License Application ("Application") filed with OET contemporaneous with this request. Specifically, Liberty requests that the supporting document identified as Form 442-Question 7 Experimental Description be withheld from routine public inspection, as it relates to sensitive technical and business information pertaining to Liberty's unique plans to test operations in the Citizen's Broadband Radio Service ("CBRS") Band and utilize this spectrum to enhance its wireless telecommunications service offerings ("confidential information"). Liberty has never made this confidential information public.

Section 0.457(d) of the Commission's rules provides that this information is automatically protected under the Commission's confidentiality procedures because it contains trade secret information.¹ Section 0.457 of the Commission's rules also requires that the Commission treat as confidential documents that contain "trade secrets and commercial or financial information . . . not routinely available for public inspection."

As you are aware, these Commission regulations implement and incorporate exemptions from the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. See 47 C.F.R. § 0.457(d). Under these exemptions, information is exempt from public disclosure if it is (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential in nature. 5 U.S.C. § 552(b)(4). The information being provided by Liberty is exempt from public disclosure under the aforementioned exemptions and the FCC's regulations because it constitutes commercial and financial information, obtained from a person, which is confidential in nature.²

¹ 47 C.F.R. § 0.459(a) ("If the materials are specifically listed in § 0.457, such a request is unnecessary.")

² Under Exemption 4 of the FOIA, the terms "commercial" and "financial" are to be given their "ordinary meaning," and thus include information in which a submitter has a "commercial interest" *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *accord, Washington Research Project, Inc. v. HEW*, 504 F.2d 238, 244 n.6 (D.C. Cir. 1974), *cert denied*, 421 U.S. 963 (1975). "Commercial interest" has been interpreted broadly to include anything "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Bd.*,

Similarly, Section 1905 of Title 18 of the United States Code makes it unlawful for federal government agencies or employees to disclose information relating to ‘the trade secrets, processes, operations, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm partnership, corporation, or association....’ Information that is exempt from release under Exemption 4 of the FOIA is prohibited from being disclosed, under 18 U.S.C. § 1905, unless disclosure is “authorized by law” by another statute other than FOIA.³ Because no other statute authorizes the release of the information at issue here, disclosure of the Documents is prohibited by the criminal provisions of 18 U.S.C. § 1905.⁴

Nevertheless, out of an abundance of caution, Liberty is also making a showing that the information would also qualify for protection pursuant to Commission rule 0.459.⁵ As required in rule 0.459, Liberty is providing below a statement of the reasons for withholding the information marked confidential, as well as a statement of facts underlying the information.

(1) Identification of the specific information for which confidential treatment is sought;

In the experimental license application that Liberty filed with the OET, it included specific information regarding the equipment it would use in order to perform a series of experimental Fixed Wireless Access trials in the Citizens Radio Broadband Service (“CBRS”) spectrum band. As mentioned in the application, Liberty will use Tarana Wireless, Inc. (“Tarana”) prototype equipment. Specifically, Liberty will use Transmitter Model Numbers AA3-BN-XX and AA3-RNF-XX. Considering that this is Tarana’s proprietary technology—and that they are prototypes—Liberty requests that the use of said models, and their technical specifications, remain confidential.

Similarly, as part of its experimental license application, Liberty disclosed to the OET that, in the event that the experimental license was granted, it would perform the experimental Fixed Wireless Access trials in the 3580-3620MHz band. Liberty requests that this information also remain confidential, as it would be put at a competitive disadvantage if competitors learned that it sought to perform trials in the newly created CBRS spectrum band.

Lastly, Liberty requests that the city in which it seeks to perform the Fixed Wireless Access trials—San Juan, Puerto Rico—and the purpose—to provide trustworthy redundancy to business clients—remain confidential as well. All of this information is contained in the attachment submitted to the OET and identified as Form 442-Question 7 Experimental Description.

(2) Identification of the Commission Proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;

Liberty is providing this confidential information to the Office of Engineering and Technology in support of its CBRS experimental license application File Number 0082-EX-CN-2019.

588 F.2d 863, 870 (2d Cir. 1978). The term “person,” for FOIA purposes, includes entities such as BHN. *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 830 F.2d 871 n.15 (D.C. Cir. 1987) (“For FOIA purposes a person may be a partnership, corporation, association, or public or private organization other than an agency.”).

³ *See Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (Exemption 4 and 18 U.S.C. § 1905 are “coextensive” and § 1905 prohibits the disclosure of confidential business information unless release is authorized by a federal statute other than FOIA); *see also* 47 C.F.R. § 0.457(d).

⁴ *See CAN Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151 (D.C. Cir. 1987).

⁵ 47 C.F.R. § 0.459.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;

Liberty is a privately-held entity that does not publicly disclose its sensitive business or information, information about other businesses, information about privileged communications, or the information about the personal communications of its employees, and takes particular caution to ensure that such information is not disclosed to competitors. Disclosure of the confidential information would put Liberty at a disadvantage in negotiating with potential customers and business associates, would damage its standing in the industry.

(4) Explanation of the degree to which the information concerns a service that is subject to competition;

The market of providing communications service is highly competitive. In particular, the Fixed Wireless Access field is largely undeveloped in San Juan, Puerto Rico. It also presents a viable opportunity to offer redundancy in an Island that desperately needs it after the passage of Hurricane Maria, on September 20, 2017. This, combined with the fact that the FCC recently unveiled the availability of the CBRS spectrum, provides for intense competition in CBRS based technologies such as Fixed Wireless Access.

(5) Explanation of how disclosure of the information could result in substantial competitive harm;

Disclosure of the confidential information would give competitors an unfair advantage by providing them with sensitive information that they could use to unfairly compete with Liberty.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;

Liberty has consistently sought to keep the confidential information from being publicly disclosed, and has only shared this information with its attorneys and any other consultants on a need-to-know basis.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;

The information referenced above is not available to the public. As mentioned, it would only be disclosed to those third parties that would participate as business clients in Liberty's Fixed Wireless Access trial.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and

Liberty does not foresee a determinable date or timeframe after which it will no longer consider this information highly confidential, commercially-sensitive trade secret information.

(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 foregoing establishes that this confidential information is subject to confidential treatment pursuant to the FCC's rules at 47 C.F.R. sec. 0.457, 0.459, and 18 U.S.C. sec. 1905, and that it contains information containing trade secrets, and commercial and financial information in a company- specific manner that has not been previously made public, and that is otherwise prohibited from being publicly disclosed