

# Holland & Knight

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August 22, 2019

*Via Electronic Filing*

Mr. Anthony Serafini, Chief  
Experimental Licensing Branch  
Office of Engineering and Technology  
Federal Communications Commission  
445 12th St., S.W.  
Room 7-A322  
Washington, DC 20554

**Re: The KeyW Corporation  
Application for Experimental Special Temporary Authorization  
ATTACHMENT B - Request for Confidential Treatment**

Dear Sir:

The KeyW Corporation (“KeyW” or “Applicant”), pursuant to Sections 0.457 and 0.459 of the Commission’s rules, respectfully requests confidential treatment for all exhibits in connection with KeyW’s above-referenced Application for Experimental Special Temporary Authorization (“Application”), but not Attachment A – Specified Operational Parameters (“Attachment A”) or this Attachment B (“Attachment B”). Specifically, the confidential treatment request includes the following exhibits:

- Exhibit 1: Description of Proposed Experimental Activities & Requested Information
- Exhibit 2: KeyW, Air Force Research Lab (AFRL) Proposed Radar Operation Presentation (subject to Distribution Statement B)
- Exhibit 3: Correspondence from U.S. Department of the Air Force, Air Force Research Laboratory (subject to Distribution Statement C)

Exhibits 1-3 (but not Attachment A or B) shall hereinafter be referred to as the “Exhibits.” To be clear, for these purposes, confidential treatment shall not limit confidential disclosure by the FCC to other U.S. governmental agencies acting in their official capacities, as set forth in Distribution Statement B or Distribution Statement C (*see, e.g.*, Exhibits 2 & 3) and consistent with “For Official Use Only” designation by the U.S. Department of Defense.

As an initial matter, confidential treatment is appropriate for all Exhibits because they contain or refer to information that has been designated “For Official Use Only” by the Department of Defense, have been made subject to Distribution Statements B or C, as set forth on Exhibits 2 or 3, or may be subject to other U.S. regulations, including International Traffic in Arms Regulations (“ITAR”), that preclude them from being made public. *See* Exhibits 2 & 3. Accordingly, and consistent with the sense of Section 0.457(a) of the Commission’s rules, these government-imposed restrictions on these Exhibits, and similar information in Exhibit 1, merit confidential treatment. (Please note, however, that to the extent these Exhibits may recite information identical to that presented in Attachment A or the online form, such as the proposed emissions designator, the Applicant recognizes that this specific information, and only this information, will not be treated as confidential, and this request does not intend to seek confidential treatment for the information expressly stated in the online form or in either Attachment A or B.)

According to current government guidance, information designated as FOUO by the Department of Defense may be: (1) disseminated within the DoD components and between officials of the DoD components and DoD contractors, consultants, and grantees as necessary in the conduct of official business; and (2) released to officials in other departments and agencies of the executive and judicial branches in performance of a valid government function. Accordingly, this information may be shared with the Federal Communications Commission and the National Telecommunications and Information Administration, but may not be generally made public. In addition, as set forth on Exhibit 2, Exhibit 2 and all information appearing therein, unless otherwise noted, is subject to Distribution Statement B, which authorizes its distribution only to U.S. government agencies. Finally, Exhibit 3 is subject to Distribution Statement C, which limits distribution to U.S. government agencies and their contractors, and it has not been cleared for public release by the U.S. Air Force. Because clearing such information will likely take at least 30 days, if granted at all, and given the expedited and short-term nature of the pending STA request, all Exhibits should be treated as confidential information.

To the extent the above information is not sufficient for the Commission to deem Exhibits 1-3 confidential, KeyW provides the following information pursuant to 47 C.F.R. § 0.459(b) of the Commission’s rules. However, to the extent the Commission ultimately concludes that any aspect of this Application for which confidential treatment was sought has not been granted, the Applicant respectfully requests an opportunity to discuss that decision further with the FCC so that it may choose to withdraw the Application without publicizing the information, as any involuntary publication of such information may subject the Applicant to serious penalties or other enforcement action.

**1. Identification of the specific information for which confidential treatment is sought.**

This request is limited to the following information to be redacted from the Application:

All Exhibits to the Application, including Exhibit 1, 2, and 3, are requested to be deemed and treated as confidential, as they contain confidential and proprietary information regarding protected governmental information, KeyW's business operations, its existing or intended business or other arrangements with other parties, and its proposed experimentation. Such confidential information includes, but is not limited to, the following: (i) government arrangements relating to the Application; (ii) potential usage of the proposed authorization(s); (iii) manufacturer and service provider details; and (iv) all equipment, operational or technical data other than that included directly on the FCC application form and Attachment A. In addition, as noted, much of this information may be ITAR-controlled, is disclosed solely on the basis of "For Official Use Only," and is subject to Distribution Statement B, which allows distribution only to U.S. Government agencies.

KeyW does not seek to withhold from public inspection the following information: any responses on the FCC application form itself, Attachment A, or this Attachment B, including applicant name, contact information, proposed frequencies, the nature of the proposed operations, and proposed power limits.

**2. Identification of the Commission proceeding in which the information was submitted as a description of the circumstances giving rise to the submission.**

The information was submitted in connection with the above-referenced Application.

**3. Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**

Information regarding government arrangements may be classified, subject to additional nondisclosure requirements, or be otherwise proprietary and financial. The equipment and experimental operations data or details, other than as provided on the FCC form and Attachment A, constitute confidential trade secrets, confidential technical information, and confidential business information. In addition, as noted, much of this information may be ITAR-controlled, is disclosed solely on the basis of "For Official Use Only," and is subject to Distribution Statement B, which allows distribution only to U.S. Government agencies.

**4. Explanation of the degree to which the information concerns a service that is subject to competition:**

The information for which confidential treatment is sought concerns innovative uses of spectrum and related detailed operational information, and this information regarding KeyW's private business and operations "would customarily be guarded from competitors." See 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2). In addition, relevant materials are plainly designated as ITAR controlled and subject to Distribution Statement B, which allows distribution only to U.S. Government agencies, or to Distribution Statement C, which limits distribution to U.S. government agencies and their contractors.

**5. Explanation of how disclosure of the information could result in substantial competitive harm.**

Disclosure of the information would reveal confidential trade secrets, technical information, and business information, resulting in disruption of KeyW's vendor relationships, including relationship with U.S. governmental agencies or parties. Indeed, disclosure of information for which confidentiality has been requested may impact the Applicant's status under government regulation, including access to information necessary to continue its work for the U.S. government. In addition, depending on interpretations of ITAR and other U.S. government or export regulations, disclosure of any of the attachments could violate U.S. law.

**6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure.**

Please see response to item 7 below.

**7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.**

KeyW has not made the information subject to this request available to the public or to any third parties, does not routinely disclose such commercially sensitive information to the public or to third parties, and has established procedures to protect such information internally. KeyW may be subject to potential government sanction if it makes available information in the exhibits to the public.

KeyW voluntarily provides the information at this time with the expectation that it will be treated confidentially in accordance with the Commission's rules. *See, e.g., 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."). **To the extent that the FCC does not agree with any of the requested Exhibits as being confidential, the Applicant hereby respectfully requests that the FCC contact the Applicant and afford the Applicant**

**the opportunity to withdraw or otherwise revise the Application prior to making any such information public.**

- 8. Justification of the period during which the submitting party asserts that material should not be available for public disclosure.**

KeyW respectfully requests that the information be held confidential during the period for which experimental authority is requested, and thereafter until such information no longer is deemed confidential and proprietary by the U.S. Government and/or KeyW and no longer subject to KeyW's internal procedures for maintaining its confidentiality.

- 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 information for which confidential treatment is requested falls within Exemption 4 of the Freedom of Information Act ("FOIA"), 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. § 522(b)(4). It also may fall under other FOIA exemptions, as set forth herein.

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

Please direct any questions or further communications regarding this request to the undersigned, with a courtesy copy to Danielle Noe, Corporate Counsel, The KeyW Corporation, at [dnoe@keywcorp.com](mailto:dnoe@keywcorp.com).

Respectfully Submitted,

HOLLAND & KNIGHT LLP



F. William LeBeau  
Attorneys for The KeyW Corporation

Attachments