

December 11, 2018

VIA ELECTRONIC FILING

Experimental Licensing Branch
Office of Engineering and Technology
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Toggle Communications LLC
Call Sign W12XAJ
ELS No. 0264-EX-CM-2018
Request for Confidential Treatment**

To Whom It May Concern:

Toggle Communications LLC (“Applicant”), pursuant to 5 U.S.C. § 552 and 47 C.F.R. § 0.459, hereby requests that the above-referenced experimental application (“Application”) be treated as confidential and not subject to public inspection. The information contained in the application and its exhibits, except as set out below, constitute confidential and proprietary information that, if subject to public disclosure, would cause significant commercial, economic, and competitive harm to Applicant and its affiliates. As demonstrated below, Applicant’s request satisfies the standards for grant of confidential treatment.

In accordance with 47 C.F.R. § 0.459(b), Applicant is providing the following information in support of this request for confidential treatment:

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

Applicant seeks confidential treatment of the information contained in Experimental Application File No. 0264-EX-CM-2018 and its exhibits, other than the FCC Form 442, this Request for Confidential Treatment, and the Stop Buzzer contact information provided in Exhibit 2 (hereafter, the “Confidential Information”). Applicant additionally seeks continued confidential treatment of the information previously deemed confidential in its Experimental Application File Nos. 0642-EX-PL-2015, 0381-EX-CR-2017, 0268-EX-CM-2017, and 0081-EX-CM-2018.

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

Applicant is submitting this information as part of an amendment to its experimental license to conduct the testing described in Exhibit 1 of file number 0264-EX-CM-2018.

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

The Confidential Information has significant commercial value, and the tests and experiments described therein include trade secrets.¹ Specifically, Applicant's tests and experiments, including the frequencies and test equipment, will be used to develop innovative services and technologies.

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

The services and technologies that are subject to this experimental application have not yet been fully developed but are expected to lead to material developments in markets subject to competition.

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

The Confidential Information is commercially sensitive. Its public release would provide insight into Applicant's intended innovative services and technologies, which would potentially jeopardize the business plans and strategies of Applicant and its affiliates. Public disclosure of the Confidential Information would also diminish the value of Applicant's efforts by unfairly enabling others to appropriate Applicant's efforts and develop similar services and/or technologies.

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

Applicant has taken steps to keep the Confidential Information confidential, including the following measures: (i) limiting the number of people involved in the tests and experiments to only essential personnel; (ii) requiring all third-parties involved to execute non-disclosure agreements; and (iii) storing documentation (including source code) in access-controlled repositories.

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 Confidential Information is not been made available to the public by Applicant and is not generally available from any other source.

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

The Confidential Information should be withheld from public inspection indefinitely in order to protect the evolving business plans and strategies of Applicant and its affiliates.

¹ See *Public Citizen Health Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (defining a trade secret for purposes of the Freedom of Information Act as a "secret, commercially valuable . . . process or device that is used for the making . . . of trade commodities and that can be said to be the end product of either innovation or substantial effort."); see also *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd 12406 ¶ 4 (1996).

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 public interest would not be served by making publically available the Confidential Information. Grant of the experimental application, as amended, would not result in harmful interference and accordingly public review of the Confidential Information would not be beneficial or necessary.

Regards,

_____/s/

Trey Hanbury

Partner
Hogan Lovells US LLP
trey.hanbury@hoganlovells.com
D 202-637-5534

Counsel for Toggle Communications LLC