



November 26, 2018

Via ELS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St., S.W.
Washington DC 20554

Attn: Office of Engineering and Technology
Experimental Licensing Branch

Re: Attachment 7 - Altaeros Energies, Inc. Request for Confidential Treatment Pursuant to Sections 0.457 and 0.459 of the Commission's Rules for Short Term Testing Agreement

Womble Bond Dickinson (US) LLP

1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

t: 202.467.6900
f: 202.467.6910

Marjorie Spivak
Partner
Direct Dial: 202-857-4538
Direct Fax: 202-261-0038
E-mail: Marjorie.Spivak@wbd-us.com

Dear Ms. Dortch:

Altaeros Energies, Inc. (Altaeros), by its undersigned counsel, pursuant to Section 0.459 of the Federal Communications Commission's ("FCC" or "Commission") rules,¹ and consistent with the provisions of the Freedom of Information Act ("FOIA"),² requests that the Commission treat as confidential and withhold from public inspection certain commercial information and trade secrets that are proprietary to Altaeros and not for public consumption. Specifically, Altaeros requests confidential treatment of the Short Term Testing Agreement ("Testing Agreement") dated February 9, 2018, and the Extension to the Testing Agreement dated November 16, 2018, included in its Application (FCC Form 442) for Special Temporary Authority ("STA") as Attachment 8, because it is competitively sensitive and not otherwise made publicly available or shared with third parties.

FOIA recognizes that "trade secrets and commercial or financial information obtained from a person and privileged or confidential" should be protected and are therefore exempt from the disclosure requirements.³ Pursuant to Section 0.459(b) of the Commission's rules and in support of its request for confidential treatment, Altaeros provides the following statement of reasons for withholding confidential information from inspection and the relevant facts upon which this request is based, including: (1) identification of the specific information for which confidential treatment is sought; (2) a description of the circumstances giving rise to the submission; (3) explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged; (4) explanation of the degree to which the information concerns a service that is subject to competition; (5) explanation of how disclosure of the

¹ See 47 C.F.R. § 0.459.

² See 5 U.S.C. § 552; 47 C.F.R. §§ 0.457 and 0.459.

³ 5 U.S.C. § 552(b)(4).



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information could result in substantial competitive harm; (6) identification of any measure taken by the submitting party to prevent unauthorized disclosure; (7) identification of whether the

information is available to the public and the extent of any previous disclosure of the information to third parties; (8) justification of the period during which the submitting party asserts that materials should not be available for public disclosure; and (9) any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

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

Altaeros requests that the Testing Agreement (Attachment 8) be treated as confidential pursuant to Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules, which protect the confidential and proprietary commercial and other information not routinely available for public inspection. Confidential treatment is sought with respect to competitively sensitive commercial and proprietary business information, and trade secret information included in the Testing Agreement concerning the terms of the spectrum licensee's ("Licensee") consent to the temporary use of its spectrum by Altaeros.

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

Altaeros has submitted an application with the FCC's Office of Engineering and Technology for Special Temporary Authority (STA) to use 2572-2578 MHz frequencies in Fremont, New Hampshire. Consent from the Licensee is required for use of the spectrum.

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

Altaeros is seeking confidential treatment of the Testing Agreement because it contains competitively sensitive commercial information. The Licensee requires Altaeros to keep the terms of the Testing Agreement for the use of the spectrum confidential. The Licensee also requires that Altaeros submit a confidentiality request for the terms of the agreement if the document is provided to the FCC.

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

The Testing Agreement for the Licensee's consent for Altaeros' use of the licensed spectrum contains information that is subject to competition.



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

The commercial information and trade secrets for which Altaeros seeks confidential treatment relates to the terms for use of the spectrum. If the terms for use of the spectrum are disclosed, other companies seeking to use the spectrum will know the terms offered by the Licensee to Altaeros. Competitors could use the information to aid in their business planning, investment, and development decisions putting both the Licensee and Altaeros at a competitive disadvantage.

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

The information for which Altaeros is seeking confidential treatment is treated as commercially significant and proprietary and not available for public access. Altaeros requires its employees, attorneys, and agents to maintain the confidentiality of the Testing Agreement.

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

Altaeros' commercial information and trade secrets that it seeks to protect are not available to the public. Altaeros does not know of any disclosure of the terms of the Testing Agreement to the public or to a third party not under agreement with Altaeros to maintain the confidentiality of those terms. As stated above, this information is treated, even within the company itself, as confidential and proprietary. Altaeros would not intentionally make such information available in any proceeding without assurances that it would be kept confidential.

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

Altaeros requests that the terms of the Testing Agreement be maintained as confidential for three years from the date of the agreement. Such a period of time will ensure that no competitive harm will be incurred by Altaeros or the Licensee. The Licensee requires Altaeros to keep the terms confidential for three years.

(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 terms of the Testing Agreement are unique for the use of the spectrum by Altaeros. Other users who know of these terms may be able use those terms to their advantage and to the disadvantage of Altaeros and the Licensee.



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To provide adequate protection from public disclosure, Altaeros requests that the Commission strictly limit distribution of the terms of the Testing Agreement within the Commission on a “need to know” basis and prohibit any distribution outside of the Commission. In the event that any person or entity outside of the Commission requests disclosure of the subject confidential information, Altaeros requests that it be immediately notified so that it can oppose such request or take any other action it deems necessary and appropriate to safeguard its interests.

The Commission has granted requests for confidentiality involving commercially sensitive information.⁴ Altaeros requests that the Commission follow its past precedent, as well as the Commission’s confidentiality rules, and grant Altaeros’ request for confidentiality.

Altaeros understands that, in accordance with Section 0.459(g) of the Commission’s rules,⁵ it will receive both telephone and written notification from the Commission if the instant request is denied.

Should the Commission have any questions with respect to this request, please communicate directly with Altaeros’ communications counsel below.

Respectfully submitted,

Womble Bond Dickinson (US) LLP

Marjorie Spivak, Partner

⁴ See, e.g., *In re Federal-State Joint Board on Universal Service NEP Cellcorp, Inc., Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, CC Docket No. 96-45, Protective Order, DA 07-3628 (Aug. 15, 2007); *In re Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 5877 (March 28, 2002); *In re Motorola Inc. and Teledesic, LLC*, 16 FCC Rcd 17056 (Sep. 25, 2001). See 47 C.F.R. § 0.459. See also *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998).

⁵ 47 C.F.R. § 0.459.