

June 6, 2002

Mr. Edmond J. Thomas
Chief Engineer
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Confidential Treatment

Dear Mr. Thomas:

Ambient Corporation (“Ambient”) respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission’s Rules, 47 C.F.R. § 0.457 and 0.459, the document covered by this correspondence be treated as confidential and withheld from public inspection. The relevant document is a narrative statement (“Narrative Statement”) to accompany an application for Special Temporary Authority (“STA”) to conduct technical performance evaluations and determine customer acceptability of a carrier current system to provide broadband access via electric power lines. Expedited review of the STA application is also requested.

In accordance with the requirements of Section 0.459(b), 47 C.R.F. § 0.459(b), Ambient submits the following:

- (1) **0.459(b)(1):** Ambient seeks confidential treatment of the Narrative Statement because it contains commercial information about market and product development and proprietary technical information pertaining to the service to be offered. Pursuant to the Freedom of Information Act (“FOIA”), public disclosure is not required for documents that are “trade secrets, commercial or financial information obtained from a person and privileged and confidential.” 5 U.S.C.A. § 552(b)(4). The information contained in the Narrative Statement falls squarely within FOIA’s exemption from public disclosure.
- (2) **0.459(b)(2):** The Narrative Statement is submitted to the Commission in support of Ambient’s application for an STA to conduct limited technical performance evaluations and determine

customer acceptability in a limited market study of its proprietary Power Line Communications ("PLC") Network technology, which is used to provide broadband access via electric power lines. *See* 47 C.F.R. §§ 5.3(i), (j) and 5.61(a). The Narrative Statement is an essential part of the application because it provides proprietary technical information regarding Ambient's PLC Network system.

- (3) **0.459(b)(3):** Ambient's Narrative Statement contains highly sensitive commercial and technical information. Such information "would customarily be guarded from competitors." *See* 47 C.F.R. § 0.457(d)(2). Disclosure of such information to the public will compromise Ambient's efforts to develop and introduce innovative technologies and become a viable competitor in this new market.
- (4) **0.459(b)(4):** Part 15 of the Commission's Rules already contemplates the prospect of delivering data via electric power lines. *See* 47 C.F.R. § 15.109(e). Such a service could become a viable competitor to cable modem and DSL broadband services. To date, this prospect has not been realized. Ambient has developed proprietary technology that, it believes, will make it economically and technically feasible to use existing electric power lines to provide broadband access to every business and residential location in the United States. Ambient's competitors include other developers of similar communications services via electric power lines as well as cable and DSL providers. The services that Ambient seeks to test are still in an experimental phase and the technology is not yet perfected. Therefore, because disclosure of the information contained in the Narrative Statement would provide possible competitors with an inappropriate means to evaluate Ambient's proprietary technology, confidential treatment of the Narrative Statement should be granted.
- (5) **0.459(b)(5):** If the Narrative Statement were to be disclosed, Ambient's efforts to develop a new service would be undermined, resulting in substantial competitive injury. Ambient has extended funds and resources for the development of this service and for the identification of possible market segments. Sharing the Narrative Statement with the public would compromise Ambient's past efforts to develop its technology as well as threaten its ability to profit from those efforts in the future.
- (6) **0.459(b)(6) and (7):** The information contained in the Narrative Statement is proprietary and not available to the public. The Narrative Statement has not been disclosed to third parties, except to Ambient's investors, business partners and counsel in this matter, for the purpose of determining the proprietary and confidential nature of the information contained in the Narrative Statement.
- (7) **0.459(b)(8):** Ambient requests that the Commission withhold the information contained in the Narrative Statement for which Ambient seeks confidential treatment for the six month period of the STA, if granted. Since the technology and market for the proposed services have not been

Mr. Edmond J. Thomas
June 6, 2002
Page 3

developed, disclosure of the Narrative Statement before this period has elapsed may compromise Ambient's position as a viable competitor. Following the end of the requested period, Ambient will revisit the confidential and proprietary nature of the information contained in the Narrative Statement and inform the Commission of the confidential status of the information.

- (8) **0.459(b)(9):** The public interest will be served if the Commission treats the Narrative Statement as confidential. Such a decision will allow Narrative to disclose to the Commission information essential to its review of Ambient's STA application without Ambient's proprietary technology and competitiveness in this new market.

For the foregoing reasons, Ambient respectfully requests that the Narrative Statement contained in its application for an STA be granted confidential status and be withheld from public inspection.

Sincerely,

/s/ Mark D. Johnson
Mark D. Johnson

Dr. Yehuda Cern
Chief Engineer
Ambient Corporation
1033 Beach Street
Brookline, MA 02446-5654
(617) 735-9395

Jonathan Jacob Nadler
Mark D. Johnson
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, DC 20044
(202) 626-6265

Counsel for Ambient Corporation

Enclosure: Narrative Statement