

May 28, 2020

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Confidentiality Request for Certain Information Provided as Part of Comcast CBRS,  
LLC's Experimental License Application

Dear Ms. Dortch:

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, Comcast CBRS, LLC ("Comcast") hereby requests confidential treatment of certain confidential business information contained in the attachment to its 3650-3700 MHz Experimental License Application ("Application") filed with OET contemporaneous with this request. Specifically, Comcast requests that the information marked "**CONFIDENTIAL—NOT FOR PUBLIC INSPECTION**" in the Exhibit titled "Description of Proposed Experimental Operations" be withheld from routine public inspection, as it relates to sensitive technical and business information pertaining to Comcast's unique plans to test operations in the Citizen's Broadband Radio Service Band and utilize this spectrum to enhance its wireless telecommunications service offerings ("confidential information"). Comcast 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.<sup>1</sup> 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

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

being provided by Comcast 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

Nevertheless, out of an abundance of caution, Comcast is also making a showing that the information would also qualify for protection pursuant to Commission rule 0.459.<sup>5</sup> As required in rule 0.459, Comcast is providing below a statement of the reasons for withholding the information marked confidential, as well as a statement of facts underlying the information.

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<sup>2</sup> 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.*, 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.").

<sup>3</sup> *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).

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

<sup>5</sup> 47 C.F.R. § 0.459.

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

Comcast seeks to withhold from public inspection and otherwise seeks confidential the confidential information.

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

Comcast is providing this confidential information to the Office of Engineering and Technology as an exhibit to its CBRS Experimental License Application.

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

Comcast 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 Comcast 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 telecommunications services is highly competitive.

**(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 Comcast.

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

Comcast 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;**

This information has never been made available to or otherwise disclosed to the public except to attorneys and similar advisors on a need-to-know basis.

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

Comcast 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.

Respectfully submitted,

/s/ K.C. Halm

K.C. Halm  
*Counsel to Comcast CBRS, LLC*