

May 16, 2019

***BY ELECTRONIC FILING***

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street N.W.  
Washington, DC 20554

**Re: Request for Confidential Treatment**

Dear Ms. Dortch:

Pursuant to the provisions of Sections 0.457 and 0.459 of the Commission's rules governing submission of confidential materials,<sup>1</sup> FCL Tech, Inc. ("FCL") respectfully requests that the explanation and vendor portions of the attached application be afforded confidential treatment and not be placed in the Commission's public files. FCL is providing this information to the Commission in a confidential exhibit to accompany its application for Special Temporary Authority.

The materials included in FCL's application qualify as trade secrets and are automatically protected under 47 C.F.R. § 0.457. Specifically, the information FCL seeks to designate as confidential includes material regarding the vendors of its equipment, as well as information about its test plans. FCL guards this information from competitors because its disclosure would give them an undue commercial advantage in connection with the provision of advanced wireless services. The confidential information thus qualifies as "commercial" information that "would customarily be guarded from competitors" and entitled to the automatic protection afforded by Section 0.457. FCL therefore requests that the Commission "not permit the inspection" of these materials.<sup>2</sup>

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<sup>1</sup> 47 C.F.R. §§ 0.457, 0.459.

<sup>2</sup> 47 C.F.R. § 0.451(b).

FCL also requests that these materials be withheld from public inspection under 47 C.F.R. § 0.459. In support of this request and pursuant to 47 C.F.R. § 0.459(b), FCL hereby states as follows:

1. The specific information for which confidential treatment is sought is the detailed nature of the antennas being used for the experiment, including their manufacturers.<sup>3</sup>
2. This confidential information is being submitted to the Commission to assist in the review of FCL's application for STA.<sup>4</sup>
3. The confidential information is commercial information that qualifies as a trade secret because such privileged material regarding the vendors of equipment, as well as information about its test plans, is closely guarded from competitors.<sup>5</sup>
4. FCL guards this information from competitors because its disclosure would give them an undue commercial advantage in connection with the provision of advanced wireless services, a service subject to competition.<sup>6</sup>
5. Knowledge of FCL's test plan would allow competitors to infer or confirm information about FCL's business strategy of which they are currently unaware.<sup>7</sup>
6. FCL takes a number of measures to prevent unauthorized disclosure of this information. These measures include a prohibition on providing any of the information to any person outside FCL, its affiliates and advisors without adequate confidentiality protection, and marking all documents and emails containing any of this information as confidential.<sup>8</sup>
7. The confidential information is not available to the public and there has been no previous disclosure of the information to the public or third parties.<sup>9</sup>

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<sup>3</sup> See 47 C.F.R § 0.459(b)(1).

<sup>4</sup> See 47 C.F.R § 0.459(b)(2).

<sup>5</sup> See 47 C.F.R § 0.459(b)(3).

<sup>6</sup> See 47 C.F.R § 0.459(b)(4).

<sup>7</sup> See 47 C.F.R § 0.459(b)(5).

<sup>8</sup> See 47 C.F.R § 0.459(b)(6).

<sup>9</sup> See 47 C.F.R § 0.459(b)(7).

8. FCL requests that the confidential information be withheld from disclosure for an indefinite period. Because of the competitive nature of FCL's business, disclosure of this information could jeopardize the competitive position of both FCL and any vendor it works with.<sup>10</sup>
9. Finally, FCL notes that protecting this information from disclosure will not affect the ability of the Commission and local frequency coordinators to identify potential interference issues. But a denial of its request would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future, making review of applications more problematic.<sup>11</sup> The ability of a government agency to continually obtain confidential information was the legislative intent for developing exemptions from the Freedom of Information Act.<sup>12</sup> The U.S. Court of Appeals for the D.C. Circuit has recognized a "private interest in preserving the confidentiality of information that is provided to the Government on a voluntary basis."<sup>13</sup>

FCL requests that the Commission return this submission if its request for confidentiality is denied.<sup>14</sup> Please contact the undersigned at 202-429-3059 if you have any questions.

Respectfully submitted,

/s/ Christopher Bjornson  
Christopher Bjornson  
Counsel to FCL Tech, Inc.

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<sup>10</sup> See 47 C.F.R. § 0.459(b)(8).

<sup>11</sup> See 47 C.F.R. § 0.459(b)(9).

<sup>12</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) ("Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government's] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.").

<sup>13</sup> *Id.* at 879.

<sup>14</sup> See 47 C.F.R. § 0.459(e).