

Christopher Bjornson
202 429 3059
cbjornson@step toe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.step toe.com



March 20, 2017

BY ELECTRONIC FILING

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

Re: Request for Confidential Treatment, File No. 0354-EX-ST-2017

Dear Ms. Dortch:

Pursuant to the provisions of Sections 0.457 and 0.459 of the Commission's rules governing submission of confidential materials,¹ 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, File No. 0354-EX-ST-2017.

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.²

¹ 47 C.F.R. §§ 0.457, 0.459.

² 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. 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.
2. The confidential information is being submitted to the Commission to assist in the review of the attached experimental license application. Protecting this information from disclosure will not affect the ability of the Commission and local frequency coordinators to identify potential interference issues.
3. 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.
4. 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.
5. Finally, FCL notes that 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. The ability of a government agency to continually obtain confidential information was the legislative intent for developing exemptions from the Freedom of Information Act.³ 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."⁴

FCL requests that the Commission return this submission if its request for confidentiality is denied.⁵ Please contact the undersigned at 202-429-3059 if you have any questions.

³ 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.").

⁴ *Id.* at 879.

⁵ See 47 C.F.R. § 0.459(e).

Marlene H. Dortch
March 20, 2017
Page 3

Respectfully submitted,

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