

**REQUEST FOR WITHHOLDING INFORMATION
FROM ROUTINE PUBLIC DISCLOSURE**
File No. 0949-EX-ST-2013

Hughes Satellite Network (“HSN”) requests pursuant to Section 0.459 of the Commission’s Rules that certain materials included within the above-referenced application for special temporary authority be withheld from routine public disclosure. In support of that request, HSN provides the following information:

Identification of materials to be withheld from routine public disclosure (§0.459(b)(1)): HSN requests that all of the information contained in Attachment 1 to the application be withheld from routine public disclosure. HSN does not seek to withhold from public inspection any information necessary for interference mitigation, including the applicant name, contact information, locations, frequencies and power levels.

Identification of the Commission proceeding in which the information was submitted (§0.459(b)(2)): The material has been submitted in connection with the HSN application for special temporary authority that has been assigned File No. 0949-EX-ST-2013.

Explanation of the degree to which the information is commercial or financial, or contains a trade secret, or is privileged (§0.459(b)(3)): The market for the service that is the subject of this request is a highly competitive one, with numerous vendors battling for the business of customers. Were HSN’s competitors to learn at this time the facts set forth in Attachment 1 to the application regarding the service that HSN is testing, it could deprive HSN of the marketplace benefits it otherwise will achieve. That, in turn, would have an adverse impact on HSN’s competitive standing with the prospective customer base to which the service will be marketed. HSN closely guards the information in Attachment 1 against disclosure to competitors and the public. The information for which confidential treatment is sought concerns HSN’s private business and operations and “would customarily be guarded from competitors.” *See* 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2). Such proprietary and confidential information may be withheld from public disclosure under the Freedom of Information Act (“FOIA”) Exemption 4.

Explanation of the degree to which the information concerns a service that is subject to competition (§0.459(b)(4)): As discussed above, the market for the services that are the subject of the request for special temporary authority is a highly competitive one. The information for which confidential treatment is sought concerns HSN’s private business and operations and “would customarily be guarded from competitors.” *See* 47 C.F.R. §§ 0.459(a)(4), 0.457(d)(2).

Explanation of how disclosure of the information could result in substantial competitive harm (§0.459(b)(5)): Public disclosure of the commercially-sensitive, proprietary, and confidential operational and technical information set forth in Attachment 1 would cause competitive harm to HSN. The industry is highly competitive, and industry participants always are interested in learning information about potential

service offerings of others, as well as applicable development and testing schedules in order to gain a competitive advantage. As noted above, were HSN's competitors to become aware of the facts set forth in Attachment 1 to the application at this time, it could deprive HSN of the marketplace benefit it otherwise will achieve and thus have an adverse impact on HSN's competitive standing. The D.C. Circuit has found that parties do not have to "show actual competitive harm" to justify confidential treatment. Rather, "[a]ctual competition and the likelihood of substantial competitive injury" is sufficient to bring commercial information within the realm of confidentiality." *Public Citizen Health Research Group*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

Identification of any measures taken by the submitting party to prevent unauthorized disclosure (§0.459(b)(6)): HSN will not be disclosing to the public that it is evaluating the service discussed in Attachment 1 or that it has sought this special temporary authority. Those HSN employees participating in the testing program will be instructed on the need to maintain confidentiality regarding the nature and source of the service.

Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties (§0.459(b)(7)): HSN has not made the information subject to this request available to the public and does not routinely disclose such commercially sensitive information to the public or to third parties, and has established procedures to protect such information internally. There has been no prior disclosure that HSN is seeking this special temporary authority or is on the verge of undertaking the testing that is the subject of the special temporary authority request. HSN voluntarily provides the information at this time with the expectation that it will be treated confidentially in accordance with the Commission's rules. *See Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 975 F.2d 871, 879 (D.C. Cir. 1992) (commercial information provided on a voluntary basis "is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.").

Justification of the period during which the submitting party asserts that material should not be available for public disclosure (§0.459(b)(8)): Given the competitive nature of the marketplace, disclosure that HSN is about to enter the particular marketplace referenced in Attachment 1 would harm HSN's competitive position. HSN requests that the information be held confidential during the period for which special temporary authority for experimental operations is requested, and thereafter until such information no longer is deemed confidential and proprietary by HSN and no longer subject to HSN's internal procedures for maintaining its confidentiality.

Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted (§0.459(b)(9)): The information for which confidential treatment is requested falls within FOIA Exemption 4, which provides a statutory basis for withholding from public inspection "matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

Consistent with 47 C.F.R. § 0.459(d)(1), HSN requests notification if release of the information subject to this request is requested pursuant to the FOIA or otherwise, so that HSN may have an opportunity to oppose grant of any such request.