

November 3, 2003

Mr. Carl Huie
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Confidential Treatment

Dear Mr. Huie:

PowerWAN, Inc. respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commissions Rules, 47C.F.R. § 0.457 and 0.459, the document covered by this correspondence be treated as confidential and withheld from public inspection. The relative document is the Narrative Statement (Exhibit A) to accompany an application for Experimental License to conduct technical performance evaluations and determine market acceptability of a carrier current system to provide broadband access using electric power lines.

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

- (1) 0.459 (b)(1): PowerWAN requests confidential treatment of the Narrative Statement (Exhibit A) as it contains information about markets, product development, and proprietary technical data pertaining to offered services. Pursuant to the Freedom of Information Act, 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 within this exception from public disclosure.
- (2) 0.459(b)(2): The Narrative Statement is submitted to the Commission in support of PowerWAN’s application for an Experimental License to conduct limited technical performance evaluations and to elicit customer response and acceptability of its proprietary Broadband Power Line system, per 47 C.F.R. §§ 5.3(i),(j) and 5.61(a). The Narrative Statement provides the necessary proprietary technical information regarding PowerWAN’s BPL system.
- (3) 0.459(b)(3): PowerWAN’s Narrative Statement contains privileged commercial and technical information that would customarily be shielded from competitors. Please see 47 C.F.R. § 0.457(d)(2). Public disclosure of such information will compromise

PowerWAN's efforts to develop and bring to the market innovative technologies to this emerging market.

- (4) 0.459(b)(4): As Part 15 of the Commission's Rules contemplate delivering information via power lines, (See 47 C.F.R. § 15.109(e)), PowerWAN believes that its proprietary technology can make this a viable and economically feasible reality. PowerWAN believes that information services delivered via power lines can make broadband available to many more people, and must compete with other providers, such as cable and DSL. There are several companies currently researching and developing technologies to use the existing electrical utility infrastructure to deliver communications to residences and businesses. PowerWAN must compete with these companies, as well as with the embedded communications providers.
- (5) 0.459(b)(5): Substantial competitive harm will result from disclosure of the Narrative Statement, as competitors in the research and development phase of their products learn of the results of PowerWAN's research. These competitors may try to limit or stop PowerWAN's entry into this market. Also, results of market identification efforts by PowerWAN would also be learned, and threaten the companies viability in dealings with particular customers.
- (6) 0.459(b)(6): PowerWAN, as a matter of routine course, takes measures to maintain trade secrets and proprietary information. Information is only disclosed on a need to know basis with selected parties, such as business partners, investors and counsel under an executed Non-Disclosure Agreement. Information provided in the Narrative Statement is proprietary and not available to the public, and would only be provided under a Non-Disclosure Agreement.
- (7) 0.459(b)(7): PowerWAN has not made information contained in the Narrative Statement available to the public. This information has only been disclosed on a need to know basis to selected parties under a Non-Disclosure Agreement.
- (8) 0.459(b)(8): The period sought for confidentiality is the period of this experimental license. PowerWAN will continue to develop and improve its technology during this period, to make the service viable as an FCC authorized communications service. All Non-Disclosure Agreements that PowerWAN has entered into with other parties have been for longer than the license period.
- (9) 0.459(b)(9): Being able to use the "third wire" into the home or business for communication carriage will help to provide competition and additional choice for consumers. As is true with all new technologies, improvements and breakthroughs realized during research and development change the complexion of the service offered. As additional work to make this a reality is continuing, PowerWAN desires to work closely with the FCC, and disclose particular aspects of its technology to the OET. Without confidentiality, this process will have to be significantly limited. This includes the Narrative Statement that is required for this Experimental License.

For the foregoing reasons, PowerWAN, Inc. is respectfully requesting that the Narrative Statement contained in this application is for an Experimental License be granted confidential status, and withheld from public disclosure.

Sincerely,

Clifford Davidow
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