



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

Confidential Materials Attached

April 8, 2019

Jennifer D. Hindin
202.719.4975
jhindin@wileyrein.com

VIA OET EXPERIMENTAL LICENSING SYSTEM

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: REQUEST FOR CONFIDENTIAL TREATMENT

Dear Ms. Dortch:

Skylo Technologies, Inc. ("Skylo"), by its attorney, respectfully requests that per FCC Rule 0.459, 47 C.F.R. § 0.459, the Commission withhold from public inspection and afford confidential treatment to the attached narrative exhibit ("Exhibit") to the instant request for the modification of a conventional experimental authorization ("Experimental Mod") in accordance with Section 552(b)(4) of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and FCC Rules 0.457(d)(2) and 0.459(b), 47 C.F.R. §§ 0.457(d)(2), 0.459(b).

Section 552(b)(4) of FOIA permits an agency to withhold from public disclosure any information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). FCC Rule 0.457(d)(2) allows persons submitting materials that they wish withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure. 47 C.F.R. § 0.457(d)(2). The requirements governing such requests are set forth in Section 0.459(b).

In accordance with FCC Rule 0.459, this request is supported by the following:

- (1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)).* Skylo seeks confidential treatment only for the Exhibit to the instant Experimental Mod request, which contains highly sensitive business data.
- (2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2)).* Skylo has filed the instant request for a modification of its Experimental authorization to test its proprietary satellite communications equipment. The information in the Exhibit supports the Experimental Mod request.
- (3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3)).* The

Exhibit contains sensitive commercial information that competitors could use to Skylo's disadvantage. Any information is commercial so long as the party submitting the information has a "commercial interest" in it. *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). The confidential information provided is sensitive commercial data of the type that businesses normally keep confidential and that Skylo, in fact, keeps confidential. *See* 5 U.S.C. § 552(b)(4).

Thus, the request contains information about Skylo's performance that is clearly "commercial" and "financial" in nature. *See Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings). In addition, the information provided is "confidential." Under well-settled case law, such material "is 'confidential' . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

The information in the Exhibit falls clearly within the definition of commercial. Competitors could use this information to enhance their market position at Skylo's expense.

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4))*. Substantial competition exists in the satellite communications industry. The presence of competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*. As noted above, the satellite communications industry and the telecommunications industry as a whole are extremely competitive. Release of the information contained in the Exhibit could have a significant impact on Skylo's commercial operations. If competitors or customers had access to this information, it could negatively affect Skylo's future negotiations with potential and existing customers.

Under these circumstances, it is "virtually axiomatic" that the information qualifies for withholding under Exemption 4 of FOIA, *see National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976), and under Sections 0.457(d)(2) and 0.459(b).



April 8, 2019
Page 3

(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6)).* Skylo limits access to information in the Exhibit to necessary personnel only. Also, Skylo takes every precaution to ensure that this information is not released to the general public.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7)).* Skylo has not made the information in the Exhibit available to the public and has not disclosed the information to any third parties except pursuant to arrangements intended to maintain confidentiality.

(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8)).* Skylo respectfully requests that the Commission withhold the information in the Exhibit from public inspection indefinitely.

Please contact the undersigned with any questions. Thank you for your assistance.

Sincerely,

/s/ Jennifer D. Hindin

Jennifer D. Hindin
Counsel for Skylo Technologies, Inc.