

Space Data Corporation
Request for Special Temporary Authority

Request For Confidential Treatment

Pursuant to Section 0.459 of the Commission's rules¹ and Section 552(b)(4) of the Freedom of Information Act ("FOIA"),² Space Data Corporation ("Space Data") requests confidential treatment for Exhibit 1 of its application for Special Temporary Authority ("STA") to conduct research trials to determine whether the CDMA wireless protocol can operate effectively on Space Data's wireless network. As further discussed below, Exhibit 1 includes proprietary and highly competitively sensitive information, the release of which would cause significant harm to Space Data. An item-by-item response to the confidentiality provisions of Section 0.459(b) of the rules is set forth below.

(1) Identification of the specific information for which confidential treatment is sought.

Space Data seeks confidential treatment of Exhibit 1 to the STA application in its entirety, which provides a detailed technical description of the wireless trials Space Data intends to conduct.

(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.

The confidential information is being submitted in support of Space Data's request for an STA to conduct trials using the CDMA wireless protocol.

(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.

The confidential information in the STA application includes sensitive information regarding the operation of Space Data's network, proposed services, and step-by-step procedures that will be undertaken for the proposed trials. This information is highly competitively sensitive and of a nature that is not made public by Space Data or other industry members, and include trade secrets.

(4) Explanation of the degree to which the information concerns a service that is subject to competition.

The confidential information includes commercial or trade information regarding Space Data's systems, operations, and proposed wireless services (including PCS services).

(5) Explanation of how disclosure of the information could result in substantial competitive harm.

The wireless industry is subject to intense competition and any release of sensitive commercial or trade information regarding Space Data's proposed services, operations, and trials would result in other market participants having competitive information regarding Space Data that is not normally available. This would result in substantial customer harm and substantial competitive harm to Space Data.

¹ 47 C.F.R. § 0.459.

² 5 U.S.C. § 552(b)(4) (exemption 4 of the FOIA provides that an agency need not disclose "trade secrets and commercial or financial information obtained from a person which is privileged or confidential").

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.

To prevent the unauthorized disclosure of any confidential information, Space Data has identified and marked as “confidential” the information that should not be made publicly available.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.

The confidential information has not been made generally available to the public.

(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure.

The confidential information includes sensitive information regarding the operation of Space Data’s network, its proposed services, and step-by-step procedures that will be undertaken for the proposed research trials. This information is highly competitively sensitive and of a nature not made public by Space Data or other industry members, and includes trade secrets. Thus, the confidential information should not be released for a period of at least three years.

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

Exhibit 1 contains trade secrets or sensitive commercial information that “would customarily be guarded from competitors.”³ Such competitively sensitive information is exempted from mandatory disclosure under “Exemption 4” of the FOIA,⁴ and Section 0.457(d) of the Commission’s rules.⁵ Exemption 4 allows the withholding of commercial or financial information that is privileged or confidential.⁶ The confidentiality requirement is satisfied if substantial competitive injury would likely result from disclosure.⁷ Space Data has taken steps to safeguard from disclosure all of the enclosed documents for which confidential treatment is sought, and public disclosure of the information identified herein would cause substantial customer and competitive harm to Space Data,⁸ more than satisfying the Exemption 4 standard for nondisclosure⁹ as well as the criteria set forth in Section 0.459(b) of the Commission’s rules.¹⁰

³ 47 C.F.R. § 0.457(d)(2).

⁴ 5 U.S.C. § 552(b)(4).

⁵ 47 C.F.R. § 0.457(d). See *National Parks and Conservation Ass’n. v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (“*National Parks*”); *Southern Company*, 14 FCC Rcd 1851, 1860 (WTB 1998) (“*Southern Company*”).

⁶ 5 U.S.C. § 552(b)(4).

⁷ *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983) (“*Public Citizen*”).

⁸ See *National Parks*, 498 F.2d at 770; *Southern Company*, 14 FCC Rcd at 1860.

⁹ See *Public Citizen*, 704 F.2d at 1290-91.

¹⁰ 47 C.F.R. § 0.459(b).