

April 25, 2013

Julius P. Knapp, Chief Engineer
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

STA File No: 0395-EX-ST-2013

Subject: **Request for Confidential Treatment of Exhibits**

Dear Mr. Knapp:

Pursuant to Sections 0.457(d) and 0.459 of the Commission's Rules, 47 CFR §§ 0.457(d) and 0.459, the Freedom of Information Act, 5 U.S.C. § 552 ("**FOIA**"), and the Trade Secrets Act, 18 USC § 1905, Space Exploration Technologies Corp. ("**SpaceX**") respectfully requests that the confidential information submitted herewith (the "**Confidential Materials**") not be placed in the public file and otherwise be withheld from public inspection.

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

The Confidential Materials consist of:

- Exhibit 1 – *List of Downrange Receiving Stations*;
- Exhibit 2 – *Trajectory Information and Transmitter On/Off Times*,
Including:
 - Exhibit 2.1 – (file name: *traj_for_rf.xlsx*); and
 - Exhibit 2.2 – (file name: *traj_for_rf_0.xlsx*).

(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 Materials are being submitted in connection with SpaceX's request for Special Temporary Authority (STA File Number 0395-EX-ST-2013) for the upcoming SpaceX commercial launch vehicle mission from Vandenberg AFB, California. The primary payload for this launch is a Canadian remote sensing satellite. Secondary payloads include two experimental payloads which were developed by U.S. universities under an Air Force Research Laboratory (AFRL) program.

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

The Confidential Materials contain specific, sensitive proprietary technical and commercial information relating to SpaceX's Falcon launch vehicle, including but not limited to details regarding mission design methodology and operations know-how.

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

SpaceX is subject to substantial competition from other commercial space transportation companies. Public disclosure of the Confidential Materials could allow SpaceX's competitors ready access to sensitive proprietary company information, which, under normal business circumstances, is not and would not be publicly disclosed.

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

Among other things, such disclosure could enable unfair competition with SpaceX. Accordingly, public disclosure of any of the information contained in the Confidential Materials is likely to cause competitive injury and substantial irreparable harm¹ to SpaceX, and is therefore exempted from mandatory disclosure under FOIA Exemption 4,² and Section 0.457(d) of the Commission's rules, 47 C.F.R. § 0.457(d).

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

SpaceX has taken substantial and reasonable measures to prevent unauthorized disclosure of the Confidential Materials, including marking the materials as Proprietary or similar and, where appropriate, subject to U.S. export control laws and regulations. Efforts to pre-coordinate early iterations of the materials with relevant U.S. Government agencies have followed the same such measures, and any disclosure of the Confidential Materials to SpaceX related entities has been in confidence, subject to a binding non-disclosure agreement, and/or subject to attorney-client privilege, where applicable.

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

To the best of the applicant's knowledge, as of the date of this submittal, the information contained in the Confidential Materials is not presently available to the public, and SpaceX does not presently intend for it to be released for unlimited distribution. The extent of previous disclosure of the information to third parties is limited to pre-coordination with other U.S. Government agencies, subject to the restrictions noted above, and among SpaceX related entities such as agents, contracts and subcontractors, on a need-to-know basis and subject in each case to nondisclosure obligations.

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

SpaceX requests that the Confidential Materials be withheld from public disclosure by the Commission for an indefinite period, or for the maximum permissible time. SpaceX has a proprietary right in its confidential commercial information. SpaceX has expended substantial financial and in-kind resources to organize and develop its business. SpaceX also has taken significant precautionary steps and measures to maintain and safeguard its confidential information, including the information contained in the Confidential Materials.

¹ See, e.g., *National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

² 5 USC § 552(b)(4). See, e.g., *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983).

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

Portions of the Confidential Materials are also subject to statutory disclosure restrictions to prevent unauthorized export pursuant to Arms Export Control Act (“AECA”) and the associated provisions of the International Traffic in Arms Regulations (“ITAR”).³ Launch vehicles and related technical data are designated as defense articles by the U.S. Munitions list (Category IV).⁴ Public disclosure of information designated as technical data covered by the U.S. Munitions List is restricted by the ITAR and requires prior authorization from the Department of State, Directorate of Defense Trade Controls (DDTC). The Commission’s public records are readily accessible to foreign persons⁵ that cannot be readily identified for purposes of export control compliance. Accordingly, the AECA & ITAR controlled Confidential Materials should not be placed in the Commission’s public file and should be otherwise withheld from public inspection pursuant to FOIA Exemption 3, which is invoked with respect to information prohibited from disclosure by another statute.⁶

For all the above-stated reasons, the Commission should grant SpaceX’s present Request for Confidential Treatment, and should not place the Confidential Materials in the public file and otherwise should withhold the Confidential Materials from public inspection.⁷

If you require additional information, please contact the undersigned on (202) 649-2705 or via email at David.DenHerder@SpaceX.com.

Very respectfully,

David J. Den Herder
Senior Counsel

³ 22 U.S.C. § 2778. *See also* 22 C.F.R. Parts 120-130.

⁴ 22 C.F.R. Part 121.

⁵ 22 C.F.R § 120.16.

⁶ 5 USC § 552(b)(3).

⁷ SpaceX requests immediate Commission notification of any request for disclosure of the Confidential Materials so that SpaceX can oppose such request or take other actions as deemed necessary.