

REQUEST FOR CONFIDENTIAL TREATMENT

SprintCom, Inc. (“Sprint”) respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules,¹ the Commission withhold from public inspection and afford confidential treatment to the material set forth in the attached Confidential Exhibit – STA Testing Activities and Equipment (“Confidential Exhibit”), as outlined further below. The submitted Confidential Exhibit contains material that is sensitive from a commercial, competitive, and financial perspective. Sprint would not reveal this information to the public, to its competitors, or to other third parties in the normal course of business.

Section 552(b)(4) of the Freedom of Information Act (“FOIA Exemption 4”) 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.”² Section 0.457(d)(2) of the Commission’s Rules allows persons to file a request for non-disclosure when submitting materials that they wish withheld from public inspection.³ In addition, because this is a voluntary submission, if the Commission denies this request for confidential treatment, Sprint requests for its Confidential Exhibit to be returned.

In accordance with Section 0.459 of the Commission’s rules,⁴ Sprint submits the following:

1. Identification of the Specific Information for Which Confidential Treatment Is Sought

Sprint seeks confidential treatment of the attached Confidential Exhibit.

2. Description of the Circumstances Giving Rise to the Submission

Sprint is submitting the Confidential Exhibit pursuant to the FCC’s experimental licensing rules to secure an experimental license for testing proprietary Sprint technology.

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged

The information described above is protected from disclosure because the Confidential Exhibit contains proprietary information concerning Sprint’s experiments, technology, and operations that could be detrimental to Sprint if they were made public. This information constitutes highly sensitive commercial information “which would customarily be guarded from competitors.” 47 C.F.R. § 0.457. The Commission has recognized that, for purposes of Exemption 4, “records are ‘commercial’ as long as the submitter has a commercial interest in

¹ 47 C.F.R. §§ 0.457, 0.459.

² 5 U.S.C. § 552(b)(4).

³ 47 C.F.R. § 0.457(d)(2).

⁴ 47 C.F.R. § 0.459(b).

them.”⁵ In this regard, the Confidential Exhibit describing Sprint’s proposed technology, capabilities, and experimental program, constitutes sensitive commercial information, with significant commercial value, which may be withheld under FOIA Exemption 4 and the Commission’s rules.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition

Sprint’s submission contains proprietary information about Sprint’s operations and technology that, if publicly disclosed, could put Sprint at a competitive disadvantage in the highly competitive wireless industry and High Altitude Platform Station development space.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm

Providing competitors or the public with the information contained in Sprint’s submission would expose commercially sensitive information to a highly competitive sector of the technology industry. The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment.⁶ Rather, “[a]ctual competition and the likelihood of substantial competitive injury” is sufficient to bring commercial information within the realm of confidentiality.”⁷ Given the competitive nature of the wireless industry and High Altitude Platform station development, the innovative nature of Sprint’s technology, and the sensitive nature of its operations, confidential treatment is appropriate to preserve against substantial competitive harm.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure

Sprint has not publicly disclosed the contents of Confidential Exhibit and, during the normal course of business, treats the information as confidential.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties

Sprint has not made the information contained in the Confidential Exhibit publicly available.

⁵ *Robert J. Butler*, Memorandum Opinion and Order, 6 FCC Rcd 5414 ¶ 12 (1991) (citing *Pub. Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *Am. Airlines v. Nat’l Mediation Bd.*, 588 F.2d 863, 868 (2d Cir. 1978)).

⁶ *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 (quoting *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

⁷ *Id.*

8. Justification of the Period during Which the Submitting Party Asserts That Material Should Not Be Available for Public Disclosure

Given the highly proprietary and non-public nature of the information in the Confidential Exhibit, Sprint requests that confidential treatment apply indefinitely, since it is not possible to determine at this time any specific date by which the information could be disclosed without risk of harm.

9. Any Other Information That the Party Seeking Confidential Treatment Believes May Be Useful in Assessing Whether Its Request for Confidentiality Should Be Granted

The Confidential Exhibit subject to this request also would qualify for Exemption 4 of the Freedom of Information Act. Exemption 4 protects information that is (i) commercial or financial; (ii) obtained by a person outside of the government; and (iii) privileged or confidential.⁸

If a request for disclosure is made, please provide Sprint with sufficient notice prior to disclosure so that it may pursue remedies to preserve confidentiality.

⁸ 5 U.S.C. § 552(b)(4).