

EXHIBIT 1

Applicant, pursuant to 5 U.S.C. § 552 and Sections 0.457 and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457, 0.459, hereby requests that certain information contained in its application for Special Temporary Authority ("STA") be treated as confidential and not subject to public inspection.

The designated information constitutes confidential and proprietary information that, if subject to public disclosure, would cause significant commercial, economic, and competitive harm. As described below, Applicant's request satisfies the standards for grant of such requests set forth in Sections 0.457 and 0.459 of the Commission's rules.

In accordance with Section 0.459(b) and in support of this request, Applicant provides the following information:

1. **Identification of the Information for Which Confidential Treatment is Sought**

Applicant seeks confidential treatment for the following exhibit:

Exhibit 2- Commercial Identification of Equipment Make and Model

2. **The Identification of the Commission Proceeding in Which the Information Was Submitted or a Description of the Circumstances Giving Rise to the Submission**

The above-referenced exhibit is being submitted to the Commission in support of a request for special temporary authority to operate on radio frequencies.

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

The information requested to be kept confidential has significant commercial value. The details of the equipment manufacturer make and model employed in the proposed trial may include trade secret information. The Commission has recognized that a trade secret is a "secret, commercially valuable plan, formula, process, or device that is used for the making preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort."¹ The equipment Applicant has chosen to

¹ Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, GC Docket No. 96-55, at para. 3, (released August 4, 1998) (defining "trade secrets" for purpose of Commission rules on confidential treatment).

employ in the trial is in its experimental stage and represents a “secret commercially valuable plan” of the manufacturer within the meaning of this definition.

4. Explanation of the Degree to Which the Information Concerns a Service that is Competitive

The market for the service that is the subject of the trial for which special temporary authority is requested has not yet been fully developed and is in its experimental stages. The equipment employed is expected to be subject to fierce competition from third parties who are exploring similar devices. The manufacturer will release the equipment for use in the trial only if confidentiality of the manufacturer and model information is maintained.

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

Disclosure of the information contained in Exhibit 2 to the public would result in significant competitive harm to the manufacturer of the technology, with whom Applicant has a nondisclosure agreement. The technology employed in the proposed experiment is sensitive and confidential information because disclosure would provide valuable insight into potential business and technology plans and strategies of manufacturer. Such information could be used by competitors of manufacturer to inhibit vendor relationships and ultimately business expansion efforts. Further, disclosure of this information could result in a breach of confidentiality obligations. Moreover, public disclosure will jeopardize the value of the equipment under examination by enabling others to utilize Applicant’s testing information to develop similar products in a similar timeframe.

6. Identification of Any Measures Taken by the Requesting Party to Prevent Unauthorized Disclosure

The information in Applicant’s STA request set forth in Confidential Exhibit 2 has been carefully protected and kept confidential. Additionally, in preparing this STA filing, to the extent involvement required exposure of information contained in Exhibit 2, Applicant limited the number of people involved to those who required knowledge and in such cases, access was provided only on a “need to know” basis and subject to attorney-client, employer-employee, board of director-appointing official relationships or non-disclosure agreements.

7. Identification of Whether the Information is Available to the Public And the Extent of Any Previous Disclosures of the Information to Any Third Parties

The Information contained in Exhibit 2 is not available to the public, is itself subject to non-disclosure agreements and has only been disclosed to third-parties pursuant to the restrictive safeguards described above.

8. Justification of the Requested Period of Confidentiality

Applicant expects that the confidential treatment is necessary for the length of the proposed trial because all of the circumstances justifying grant of this request for confidential treatment are not expected to change during the pendency of the trial.

9. Any Other Information that Would be Useful in Assessing Whether this Request Should be Submitted

The information subject to this request for confidentiality should not be made available for public disclosure at any time. There is nothing material that public review of this information would add to the Commission's analysis of Applicant's request for an experimental authorization. Experimental licenses are not subject to the mandatory 30-day Public Notice requirements of Section 309 of the Communications Act, 47 U.S.C. § 309(b). Further, STAs and experimental licenses do not grant permanent rights to operate ~~and do not permit the provision of commercial services to customers. See 47 C.F.R. §5.3 (describing limited scope of permissible experimental services.)~~

Moreover, public disclosure of the sensitive information in Confidential Exhibit 2 of the associated request for special temporary authority *after* the Commission has ruled is not necessary for the Commission to fulfill its regulatory responsibilities. By the terms of the Commission's Rules, all experimental licenses and STAs are nonexclusive and subject to the requirement that harmful interference may not be caused to any station operating in accordance with the Commission's Table of Allocations, 47 C.F.R. § 5.85(b) and (c), and that operations must cease in the event interference is detected. See 47 C.F.R. § 5.117.

In discussing its rules for confidential treatment, the Commission recognized that "*with the exception of experimental licenses*, most information submitted in Title III licenses proceedings should be made publicly available."²

² Id. at para. 34; see e.g., Jeffrey A. Knauss on Request for Inspection, 11 FCC Rcd 10819 (1996) (given limited purpose of the experimental licenses, FOIA requester's concern regarding potential interference from equipment did not justify disclosure of confidential information in an experimental application.)