

CONFIDENTIAL TREATMENT REQUEST

January 19, 2016

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Request for Confidential Treatment

Dear Sir or Madame,

Pursuant to 47 C.F.R. §0.457(d) and 47 C.F.R. § 0.459, MC10, Inc. (“MC10”) hereby requests confidential treatment of portions of the enclosed Equipment Authorization Form 731 application and the exhibits attached thereto (collectively, the “Application”), which is being submitted electronically. In support of this request, MC10 states as follows:

(1) Types of confidentiality being requested:

| Item | Name | Description | Type of confidentiality |
|-----------|-------------------------|---|-------------------------|
| Exhibit A | Block Diagram | Detailed technical drawing of the equipment | Long Term |
| Exhibit B | Schematics | Detailed technical drawing of the equipment | Long Term |
| Exhibit C | Test Setup Photos | Detailed photos of tests performed on the equipment | Short Term |
| Exhibit D | User’s Manual | Manual to be provided to the end user | Short Term |
| Exhibit E | Internal Photos | Detailed photos of the internal components of the equipment | Short Term |
| Exhibit F | Parts List | List of all components used in the equipment | Long Term |
| Exhibit G | Operational Description | Detailed description of the functional operation of the equipment | Long Term |

(2) Identification of the specific information for which confidential treatment is sought;

MC10 requests that the Commission withhold from public inspection, and afford confidential treatment to, the information contained in Exhibits A through G of the Application (as listed in the table above), consisting of information regarding MC10’s device components (together, the “Confidential Material”). MC10 requests that the Commission effect this request by withholding the entirety of Exhibits A through G from inspection.

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

The Application is being submitted in response to the requirements imposed on MC10 by the Commission in 47 CFR §§ 2.803(b).

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

The Confidential Material in Exhibits A, B, F and G contains information regarding MC10’s device components. This information in these exhibits is commercially and competitively highly sensitive. Public disclosure of this information at any time could place MC10 at a competitive disadvantage vis-à-vis its competitors and could damage MC10’s position in the marketplace. The Commission has long recognized that competitive harm can result from the disclosure of

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confidential business information. *See Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41 (May 2, 1986).

The Confidential Material in Exhibits C, D and E contains information regarding the functionality and design of MC10's product. This information is commercially and competitively highly sensitive until the product becomes available for sale to the public. Public disclosure of this information prior to the date of first commercial sale of the product could place MC10 at a competitive disadvantage vis-à-vis its competitors and could damage MC10's position in the marketplace. The Commission has long recognized that competitive harm can result from the disclosure of confidential business information. *See Pan American Satellite Corporation*, FOIA Control Nos. 85-219, 86-38, 86-41 (May 2, 1986).

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

The Confidential Material concerns MC10's activities in the market for health wearable devices. MC10 is subject to robust competition from numerous existing and potential service providers. Participants in adjacent market segments – e.g., wearable devices and mobile phone-based applications in the wellness and fitness space- apply additional competitive pressure.

(6) Explanation of how disclosure of the information could result in substantial competitive harm;

As discussed above, the Confidential Material in Exhibits A, B, F and G contains highly sensitive commercial and technical product information. MC10 has a commercial interest in all of this information and would be harmed by its disclosure at any time. In particular, the disclosure of this information would provide competitors with unwarranted insights in to the technical configuration of the MC10 devices and MC10's product strategy and would facilitate the development of strategic and competitively harmful responses by those competitors.

As discussed above, the Confidential Material in Exhibits C, D and E contains highly sensitive commercial and technical product information. MC10 has a commercial interest in all of this information and would be harmed by its disclosure prior to the date of first commercial sale of the product. Such disclosure would provide competitors with unwarranted insights into the design and operation of the MC10 devices and MC10's product strategy and would facilitate the development of strategic and competitively harmful responses by those competitors.

(7) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;

The Confidential Material in Exhibits A, B, F and G is not distributed, circulated, or provided to any party outside of MC10 that is not bound by confidentiality obligations. MC10 treats this information as highly sensitive information; thus only certain personnel within the company have access to it.

Until the date of first commercial sale of the product, the Confidential Material in Exhibits C, D and E is not distributed, circulated, or provided to any party outside of MC10 that is not bound by confidentiality obligations. MC10 treats this information as highly sensitive information; thus only certain personnel within the company have access to it.

(8) 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 Material in Exhibits A, B, F and G is not available to the public and has not previously been disclosed to third parties not bound by confidentiality obligations.

The Confidential Material in Exhibits C, D and E is not available to the public and has not previously been disclosed to third parties not bound by confidentiality obligations.

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

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MC10 maintains that the Confidential Material in Exhibits A, B, F and G should remain subject to confidential treatment indefinitely. Even historical data can be used to track trends or business decisions, and this information could then be used against MC10.

MC10 maintains that the Confidential Material in Exhibits C, D and E should remain subject to confidential treatment for at least a period of 180 days from the date of the grant. This information, if made available to the public before the date of first commercial sale of the product, could be used to harm sales of MC10's first ever commercial product.

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

MC10 notes that the Confidential Material is exempt from disclosure under Exemption 4 to FOIA. 5 U.S.C. §552(b)(4).

Exemption 4 covers "trade secrets and commercial or financial information obtained from a person and privileged or confidential." *Id.* The exemption extends to all information that is: (i) commercial or financial, (ii) obtained from a person, and (iii) privileged or confidential. *See National Parks and Conservation Association vs. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974). The Confidential Material meets all three of these prongs.

First, the terms "commercial" and "financial" are "given their ordinary meaning," and include any information in which a submitter holds a "commercial interest." *Public Citizen Health Research Group vs. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). As noted above, the Confidential Material contains sensitive commercial information. MC10 has a commercial interest in all of this information; thus, it is "commercial or financial."

Second, "obtained by a person" refers to receipt of information from "a wide range of entities, including corporations." *Landfair v. U.S. Dep't. of Army*, 645 F.Supp. 325, 327- 28 (D.D.C. 1986). MC10 is a corporation and it provided the Commission with the Confidential Material; thus, the information at issue here is "obtained by a person."

Third, information is privileged or confidential if disclosure of it (i) is likely to cause substantial harm to the submitter's competitive position, (ii) would make it difficult for the government to obtain reliable information in the future, or (iii) would impair other governmental interests. *See Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 28-29 (D.D.C. 2000). As discussed above, disclosure of the Confidential Material would cause substantial harm to MC10's competitive position. For this reason, disclosure of the Confidential Material also would encourage MC10 and others "to be less forthcoming in their submissions, out of concern both for appearances and their own financial interests." *Id.* at 29-30.

Please contact the undersigned should you have any questions concerning this filing.

MC10, Inc.

By: 

Name: Alice Sansone

Title: VP and General Counsel