Federal Communication Commission
Equipment Authorization Branch
7435 Oakland Mills Road
Columbia, MID 21046

Screening Eagle USA, Inc.
117 Corporation Drive
Aliquippa, PA 15001

Date: 8 November 2023
FCC ID: 2ANPE-GM8000

Request for Confidentiality of 2ANPE-GM8000

To Whom It May Concern:

The above-referenced application, filed by Proceq USA Inc. (Proceq), seeks certification of a ground-penetrating radar (GPR) device.

I. FACTUAL BASIS FOR CONFIDENTIALITY REQUEST

Ordinarily, the Commission denies confidentiality to internal photographs of a device submitted for equipment authorization on the ground that they contain information that is freely available to a competitor by simply purchasing the device and removing the cover. However, the GPR device in question is different as the interior components are packed tightly into a very small form factor that cannot opened without damaging and disabling the device. To gain access to the views shown in the interior photographs of the Proseq device, a competitor would have to purchase the device and then carry out the following steps:

1. Obtain and use a custom security screwdriver available only from Proceq, to remove the tamper-proof screw securing the cover. The custom screwdriver is only sold to Proceq partners and is never given to customers. Without the custom screwdriver to access the interior of the product, it would require destroying parts of the device antenna.

2. Disassemble various electronic assemblies in a careful and proper order manner to prevent irreversible damage to the components. To access certain electronics of the antenna is would be necessary to remove the frontend

carefully from the shielding. When these steps are done improperly, the electronics can be severely damaged.

A lot of clever mechanical engineering effort has gone into packing everything so tightly in such a small form factor. The device is also not user-serviceable and cannot reliably be restored to its original operating condition once it is opened by someone other than Proceq with the right tools, care, and knowledge regarding its intricate assembly process. Proceq has not released instructions on how to disassemble its units as it keeps such information internal to the company.

The posting of internal photographs on the Commission's web site would allow a competitor to bypass this difficult disassembly and allow it to determine how Proceq managed to pack SFCW GPR electronics into such a small form factor and still maintain the achieved levels of performance. Competitors could also use such information to assist in determining the relative costs of manufacturing, the man-hours required for device construction and assembly and the compatibility/incompatibility with other designs – which in effect would greatly simplify a reverse engineering of the product. Proceq respectfully submits that it should not be required to hand over to competitors, the fruits of it many years of expensive engineering.

II. LEGAL BASIS FOR REQUEST

The Freedom of Information Act (FOIA) protects from disclosure "commercial or financial information obtained from a person and privileged or confidential. Information is confidential if it is "the kind of information 'that would customarily not be released to the public by the person from whom it was obtained and would cause "substantial harm to the competitive position of the person from whom the information was obtained.

In *Worthington Compressors,* the D.C. Circuit addressed the specific issue underlying the present request, to wit, the "additional wrinkle that the requested information is available, *at some cost*, from an additional source." Here, of course, the additional source is the acquisition, disassembly and destruction of a Proceq device for inspection. According to the *Worthington* court, availability of the information through alternate sources triggers two additional inquiries: (1) the *commercial value* of the information, and (2) the *cost of acquiring* the information through the other means. Importantly, the court acknowledged that the submitting party can suffer competitive harm if the information has commercial value to competitors, as would be the case for interior photographs that disclosed a great deal of expensive and proprietary engineering. Further, the court said that if competitors "can acquire the information [by other means] only at considerable cost, agency disclosure may well benefit the competitors at the expense of the submitter.

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The court went on to note that competitors may get “quite a bargain” and a “potential windfall” if they can acquire hard-won proprietary information at FOIA retrieval costs and that “[s]uch bargains could easily have competitive consequences not contemplated as part of FOIA”s principal aim of promoting openness in government. In the case of photos posted on the Commission’s website, a competitor need not even file an FOIA request but can simply download the material at no cost whatsoever.

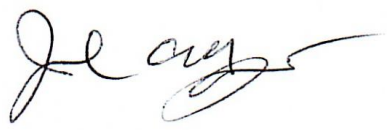
The cost of acquiring interior photographs, if they are not available on the Commission’s website, amounts to the retail cost of a GPR unit and the time and effort required for complete disassembly. Although this may not amount to a large expenditure of money in absolute terms, it is still a significant expenditure for a small company, and most GPR manufacturers are small companies. This fact alone warrant protection from disclosure under applicable court precedent.

III. CONCLUSION

Federal case law protects information submitted to an agency and (1) withheld from the public; (2) capable of causing substantial competitive harm to the submitter; and (3) expensive to acquire by other means. Unlike many other product photographs, the interior photographs of Proceq’s GPR devices meet all of these criteria, and therefore are entitled to protection against public disclosure.

Importantly, Proceq does not request a final ruling on the issue at this time. Proceq asks only that the Commission refrain from posting any internal photographs on its website pursuant to Section 0.459(d)(1), unless and until the Commission receives a properly framed request for inspection of the photographs, so that Proceq is given an adequate opportunity to challenge their release.

Sincerely,



Printed Name: John Yerage
Title: Board Secretary
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