

# JONES DAY

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February 24, 2014

## VIA ELECTRONIC FILING

Joe Dichoso, Chief  
Equipment Authorization Branch, Laboratory Division  
Office of Engineering and Technology  
Federal Communications Commission  
7435 Oakland Mills Road  
Columbia, MD 21046-1609

**Re: The Boeing Company, Supplemented Request for Confidential Treatment  
FCC Identification Number H8V-BLK1 (Model: BLACK)**

Dear Mr. Dichoso:

The Boeing Company (“Boeing”), through its attorneys and based on discussions with your office, hereby submits this request for confidential treatment in order to request that the exhibits listed below and attached to the FCC Forms 731 for the H8V-BLK1 (Model: BLACK) be given confidential treatment and permanently withheld from public inspection pursuant to Sections 0.457(d) and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457(d) and 0.459:

Block Diagram  
Internal Photos  
Operational Description  
Parts List  
Tune Up Procedure  
SDR Software/Security Information  
Schematics  
Antenna Specifications  
Product Change Document  
Boeing Black Purchase Agreement

Boeing further requests pursuant to Sections 0.457(d) and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457(d) and 0.459, that the exhibits listed below and attached to the FCC Forms 731 for the H8V-BLK1 be given temporary confidential treatment and withheld from public inspection for a period of 180 days:

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Test Set Up Photos  
External Photos

Boeing has developed its Black phone primarily by governmental agencies and their contractors to ensure that data and voice communications undertaken by their respective employees are transmitted and stored in a highly secure manner. Pursuant to the Freedom of Information Act (“FOIA”), public disclosure is not required for “trade secrets and commercial or financial information obtained from any person and privileged or confidential categories of materials not routinely available for public inspection.”<sup>1</sup> The commercial proprietary information contained within the exhibits falls squarely within this exemption from public disclosure.

Pursuant to Sections 0.457(d) and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457(d) and 0.459, the following information is provided in support of the request for confidential treatment. Boeing is submitted the confidential information to the Commission in support of an application for equipment certification.<sup>2</sup> The exhibits for which confidential treatment is sought contain Boeing trade secrets and proprietary information relating to the secure operation of the Black phone that Boeing has developed and for which it seeks certification.<sup>3</sup> The information is also highly sensitive because it identifies operational and design elements of the product that facilitate the secure operation of the device and release of such information could assist third parties in defeating these security measures.<sup>4</sup> The market for development of these products is very competitive.<sup>5</sup> Due to the competitive environment for such products, release of this information to its competitors would harm Boeing.<sup>6</sup> Boeing would lose the competitive benefit of the substantial resources it invested in the development of the product should the information contained in these exhibits be disclosed to its competitors.

It is customary for companies such as Boeing not to disclose the details of its designs, technologies and products to competitors or to the public, and Boeing has taken reasonable actions to keep these trade secrets confidential.<sup>7</sup> Boeing employees sign agreements restricting their ability to disclose Boeing’s intellectual property used to develop products such as the Black

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<sup>1</sup> 5 U.S.C. § 552(b)(4); *see also* 47 C.F.R. § 0.457(d).

<sup>2</sup> *See* 47 C.F.R. § 0.459(b)(2).

<sup>3</sup> *See* 47 C.F.R. § 0.459(b)(3).

<sup>4</sup> *See* 47 C.F.R. § 0.459(b)(3).

<sup>5</sup> *See* 47 C.F.R. § 0.459(b)(4).

<sup>6</sup> *See* 47 C.F.R. § 0.459(b)(5).

<sup>7</sup> *See* 47 C.F.R. § 0.459(b)(6).

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phone. Boeing has not disclosed information regarding the product to any other party without first securing the execution of a non-disclosure agreement.<sup>8</sup> Boeing requests that the subject information not be made routinely available for public inspection at any time.<sup>9</sup> The design and technology included in the product would benefit Boeing's competitors and harm Boeing if it is released for public inspection at any time.

Boeing's Black phone will be sold primarily to government agencies and companies engaged in contractual activities with those agencies that are related to defense and homeland security. The device will be marketed and sold in a manner such that low level technical and operational information about the product will not be provided to the general public. Detailed technical information distributed at trade shows will be limited or protected by non-disclosure agreements.

Additional justifications for withholding the above listed materials from public inspection are as follows. With respect to the Block Diagram, Schematics, Internal Photos, Parts List/Tune Up Information, and Boeing Black Purchase Agreement, pursuant to guidance issued by your office, such materials may be treated as confidential on a permanent basis if "the device is sealed and disassembly would destroy the product."<sup>10</sup> There are no serviceable parts on Boeing's Black phone and any attempted servicing or replacing of parts would destroy the product. The Boeing Black phone is manufactured as a sealed device both with epoxy around the casing and with screws, the heads of which are covered with tamper proof covering to identify attempted disassembly. Any attempt to break open the casing of the device would trigger functions that would delete the data and software contained within the device and make the device inoperable.

The Boeing Black is also protected by the Boeing Black Purchase Agreement ("Purchase Agreement"), which specifically designates and protects as "proprietary information" the

components, hardware, Product Software, applications, functionalities, or internal structure or workings of the Product provided by Seller, including without limitation those that can be obtained by disassembling or opening the Product or its software or components.<sup>11</sup>

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<sup>8</sup> See 47 C.F.R. § 0.459(b)(7).

<sup>9</sup> See 47 C.F.R. § 0.459(b)(8).

<sup>10</sup> *Confidentiality Procedures Detail*, FCC Office of Engineering and Technology, Laboratory Division, at 2 (Dec. 21, 2011).

<sup>11</sup> See *Boeing Black Purchase Agreement*, § 1.4.

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The current Purchase Agreement, which itself is marked and designated as “Boeing Proprietary and Confidential,” further designates and protects as “proprietary information” all “descriptive information and data about the Product.”<sup>12</sup> The scope of this protection therefore includes both the internal parts and structure of the device, and also any photographs, depictions, or descriptions of these propriety elements.

The Purchase Agreement further provides that the purchaser agrees

to not disclose Proprietary Information to any nonparty or otherwise use Proprietary Information that it receives under this Agreement without first obtaining the written permission of Seller; (ii) to hold Proprietary Information in trust and confidence and only disclose or otherwise provide access to the same to employees or agents with a bona fide official use or need to know, and on the condition that said employees have been made aware of their obligations hereunder, agree to be bound by the same and have entered into confidentiality agreements as Buyer employees or agents which are no less restrictive than this Agreement; (iii) to refrain from using the Product, reverse engineering, or adding software, applications, or other components in a manner that violates the Proprietary Information or Intellectual Property rights of Boeing or any Third Party.

Considered together, the physical, technical, and legal measures that Boeing has undertaken to ensure the confidentiality and security of the internal components, functions and descriptions of the Boeing Black phone justify treatment of the Block Diagram, Schematics, Internal Photos, Parts List/Tune Up Information, and the Purchase Agreement as permanently confidential under Sections 0.457(d) and 0.459 of the Commission’s rules. Permanent confidential treatment is further justified for these exhibits because any disclosure of the identified exhibits would facilitate efforts to defeat Boeing’s these hardware security measures, which would be counter to the underlying purpose of the product.

Finally, the public interest will be served by granting this request for confidential treatment. It is in the public interest that equipment manufacturers invest in the development of new technologies and be permitted to benefit from those efforts.<sup>13</sup> It is also in the public interest that the design and operational details of products that are specifically intended for use by

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<sup>12</sup> *See id.*

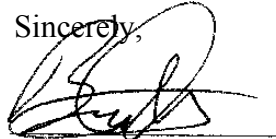
<sup>13</sup> *See* 47 C.F.R. § 0.459(b)(9).

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governmental agencies and their contractors be protected from disclosure in order to ensure the continued reliability and security of such products.

Please contact the undersigned if you have any questions about this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Olcott", written over a horizontal line.

Bruce A. Olcott  
Counsel to The Boeing Company