

Law Offices

1500 K Street, N.W.
Washington, DC
20005-1209

202-842-8800 phone
202-842-8465 fax
www.drinkerbiddle.com

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
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June 4, 2010

FILED/ACCEPTED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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JUN - 4 2010

Federal Communications Commission
Office of the Secretary

Re: Open Range Communications Inc. Request for Confidential Treatment Pursuant to Sections 0.457 and 0.459 of the FCC Rules File No. SAT-MOD-20091214-00152

Dear Ms. Dortch:

Open Range Communications Inc., by its attorney, hereby submits a letter from the Department of Agriculture Rural Utilities Service (RUS) received yesterday by Open Range Communications Inc. ("RUS Letter"). The RUS Letter relates to the Commission's consideration of the *Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities* (SAT-MOD-20091214-00152) filed by Globalstar on December 14, 2009 ("*Globalstar Application*"). Open Range respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 & 0.459, the Commission withhold from public inspection and accord confidential treatment to the RUS Letter which contains commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").¹

Exemption 4 permits parties to withhold from public information "trade secrets and commercial or financial information obtained from a person and privileged or confidential categories of materials not routinely available for public inspection." *Id.* Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *See National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)(footnote omitted); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993).

Section 0.457(d)(2) allows persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-

¹ See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

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disclosure, pursuant to Section 0.459. In accordance with the requirements contained in Section 0.459(b) for such requests, Open Range hereby submits the following:

(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*. Open Range seeks confidential treatment of the RUS Letter which contains information about the status of the financing provided by RUS to Open Range.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*. Open Range is filing the RUS Letter voluntarily to aid in the Commission's consideration of the *Globalstar Application*.

(3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3))*. The RUS Letter contains sensitive commercial information regarding the status of Open Range's financing that competitors could use to Open Range's disadvantage. The courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings. The Commission has broadly defined commercial information, stating that "[c]ommercial' is broader than information regarding basic commercial operations, such as sales and profits..." The information in the RUS Letter falls clearly within the definition of commercial. Competitors could use this information to enhance their market position at Open Range's expense.

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4))*. Substantial competition exists in a number of the broadband markets served or to be served by Open Range. The presence of competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))*. Release of the RUS Letter could have a significant impact on Open Range's commercial operations. If competitors or customers had access to this information, it could negatively affect Open Range's relationships with potential and existing customers.

(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*. Open Range treats the RUS Letter as confidential commercial information and has not disclosed the RUS Letter publicly.

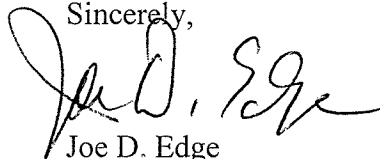
(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7))*. The RUS Letter is not publicly available.

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(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8))*. Open Range respectfully requests that the Commission withhold the information in the RUS Letter from public inspection indefinitely. This information will remain commercially sensitive until the RUS loan is repaid.

The RUS Letter is being submitted to the Commission voluntarily. Pursuant to Section 0.459(e), Open Range respectfully requests that, should the Commission deny this request for confidential treatment, it return the RUS Letter to Open Range without consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe D. Edge". The signature is fluid and cursive, with a large initial "J" and "E".

Joe D. Edge
Counsel for
Open Range Communications Inc.

JDE