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July 28, 2010

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Federal Communications Commission
Office of the Secretary

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

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:

On July 27, 2010, William S. Beans, Curt Hockemeier, Keyoumars Saeed, Keith Paglus, Chris Edwards, Jeff Leventhal, and Greg Slemmons of Open Range Communications Inc., David Walsh, James Gorton, Jon Christensen, and the undersigned met with Paul De Sa, Mindel De La Torre, Roderick Porter, Robert Nelson, Gardner Foster, Ruth Milkman, John Leibovitz, Sharon Gillett, Austin Schlick and Julius Knapp of the FCC staff. Open Range respectfully requests, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 & 0.459, that the Commission withhold from public inspection and accord confidential treatment to certain portions of the presentation made at that meeting which contains commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").¹

Open Range requests confidential treatment for the material appearing on certain pages of the attached submission labeled "Proprietary and Confidential Open Range Communications". The pages that are not so-designated were submitted separately to the Commission together with a notice of ex parte communication.

Exemption 4 permits the Commission to withhold from public inspection "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*

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

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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-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 for the above-identified Open Range materials which contain details regarding the Open Range network, deployment, penetration and market coverage.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*. Open Range submitted the information during the meeting referenced in the first paragraph of this letter to facilitate the Commission's consideration of the *Globalstar Application* (File No. SAT-MOD-20091214-00152).

(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 Open Range information contains sensitive commercial information regarding the status of Open Range's deployment, technology, coverage and market penetration 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 Open Range submission 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 Open Range information could have a significant impact on Open Range's commercial operations. If competitors had access to this information, it could aid them in competing with Open Range to Open Range's detriment.

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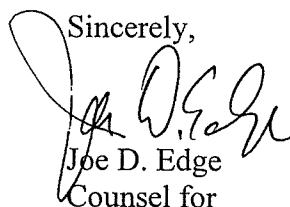
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(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*. Open Range treats the information as confidential commercial information and has not disclosed the information publicly.

(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 Open Range information is not publicly available.

(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 Open Range submission from public inspection indefinitely. This information will remain commercially sensitive throughout the deployment and operation of the Open Range system.

Sincerely,



Joe D. Edge
Counsel for

Open Range Communications Inc.

Cc: Paul De Sa

JDE