

REQUEST FOR CONFIDENTIAL TREATMENT

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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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Re: Request for Confidential Treatment

Dear Sir or Madam:

Pursuant to Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), LightSquared Subsidiary LLC ("LightSquared") hereby requests confidential treatment of the enclosed Quarterly Report of LightSquared Subsidiary LLC ("Report"), which is being submitted in IB Docket No. 08-184 and IBFS File No. SAT-MOD-20101118-00239. In support of this request, LightSquared states as follows:

- (1) Identification of the specific information for which confidential treatment is sought.** LightSquared requests that the Commission withhold from public inspection, and afford confidential treatment to, the information redacted in the "public" version of the Report ("Confidential Material"). LightSquared requests that the Commission effect this request by withholding the entirety of the unredacted "confidential" version of the Report from public inspection.
- (2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.** The Report is being submitted in response to requirements imposed on LightSquared by the Commission in: (i) the *Memorandum Opinion and Order* adopted by the Commission on March 26, 2010 in IB Docket No. 08-184 (DA 10-535); and (ii) the *Order and Authorization* adopted by the Commission on January 26, 2011 in IBFS File No. SAT-MOD-20101118-00239 (DA 11-133).
- (3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.** The Confidential Material contains detailed information regarding LightSquared's business plans, network deployment, and operations. This information is commercially and competitively sensitive. Public disclosure of this information could place LightSquared at a competitive disadvantage vis-à-vis its competitors, and damage LightSquared's position in the marketplace. The Commission has long recognized that

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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). Moreover, by adopting a *Protective Order* in one of the proceedings in which the report is required to be filed, IB Docket No. 08-184 (DA 09-2472), the Commission has recognized that the type of information being submitted should be protected from public disclosure.

- (4) **Explanation of the degree to which the information concerns a service that is subject to competition.** The Confidential Material concerns LightSquared's activities in the market for commercial mobile radio service ("CMRS") offerings. LightSquared is subject to robust competition from numerous existing and potential service providers, as the Commission has acknowledged. Participants in adjacent market segments—*e.g.*, wireline, satellite, and fixed wireless service providers—apply additional competitive pressure.
- (5) **Explanation of how disclosure of the information could result in substantial competitive harm.** As discussed above, the Confidential Material contains sensitive commercial and financial information. LightSquared has a commercial interest in all of this information and would be harmed by its disclosure. In particular, the disclosure of this information would provide competitors with unwarranted insights into the operational status of LightSquared, and would facilitate the development of strategic and competitively harmful responses by those competitors. For example, competitors could use this information to: (i) narrowly target build-out and marketing efforts to specific service areas in order to exploit insights regarding the timing or substance of LightSquared's planned offerings; (ii) adopt pricing and marketing strategies that would confer a competitive advantage over LightSquared; and (iii) undermine LightSquared's negotiations with third parties.
- (6) **Identification of any measures taken by the submitting party to prevent unauthorized disclosure.** The Confidential Material is not normally distributed, circulated, or provided to any party outside of LightSquared that is not bound by confidentiality obligations. LightSquared treats this information as sensitive information; thus only certain personnel within the company have access to it.
- (7) **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 is not available to the public, and has not previously been disclosed to third parties not bound by confidentiality obligations, excepting agents of the Commission.

- (8) **Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** LightSquared maintains that the Confidential Material 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 LightSquared.
- (9) **Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.** LightSquared 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 and financial information. LightSquared has a commercial interest in all of this information; thus, it is “commercial or financial.”

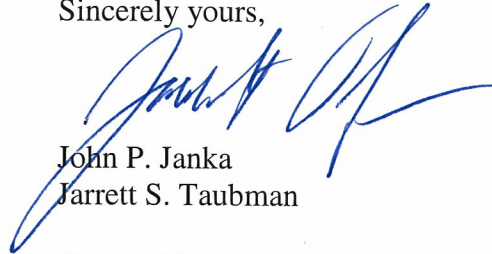
Second, “obtained by a person” refers to receipt of information from “a wide range of entities, including corporations.” *Landfair v. U.S. Dep’t. of Army*, 645 F.Supp. 325, 327-28 (D.D.C. 1986). LightSquared is a corporation and it provided the Commission with the Confidential Material; thus, the information 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 LightSquared’s competitive position. For this reason, disclosure of the Confidential Material also would encourage LightSquared and others “to be less forthcoming in their submissions, out of concern both for appearances and their own financial interests.” *Id.* at 29-30.

LATHAM & WATKINS LLP

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

Sincerely yours,

A handwritten signature in blue ink, appearing to be "John P. Janka" and "Jarrett S. Taubman" combined.

John P. Janka
Jarrett S. Taubman

Counsel for LightSquared Subsidiary LLC