

Law Offices

1500 K Street N. W.
Suite 1100
Washington, D.C.
20005-1209

(202) 842-8800
(202) 842-8465 fax
www.drinkerbiddle.com

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

October 1, 2010

FILED/ACCEPTED

OCT - 1 2010

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

Federal Communications Commission
Office of the Secretary

FOR INTERNAL USE ONLY

NON-PUBLIC

Re: Open Range Communications Inc. Request for Confidential Treatment Pursuant to Sections 0.457 and 0.459 of the FCC Rules File No. SAT-STA-20100625-00147

Dear Ms. Dortch:

Open Range Communications Inc., by its attorney, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 & 0.459, respectfully requests that the Commission withhold from public inspection and accord confidential treatment to the attached material which contains commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").¹ The attached material sets forth information regarding Open Range's efforts to secure alternative spectrum.

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 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

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

FOR INTERNAL USE ONLY
NON-PUBLIC

Ms. Marlene H. Dortch, Secretary
October 1, 2010
Page 2

Open Range material which contains information regarding Open Range's efforts to secure alternative spectrum.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*. Open Range is filing the information as directed by the International and Wireless Bureaus and the Office of Engineering and Technology.

(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 material contains sensitive commercial information regarding Open Range's efforts to secure alternative spectrum 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.

(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

Ms. Marlene H. Dortch, Secretary
October 1, 2010
Page 3

commercially sensitive throughout the deployment and operation of the Open Range system.

Sincerely,

/s/Joe D. Edge

Joe D. Edge

Counsel for

Open Range Communications Inc.

JDE/cf