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FOR INTERNAL USE ONLY

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**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**

January 29, 2019

*By Hand Delivery*

Accepted / Filed

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

CONFIDENTIAL

JAN 29 2019

Federal Communications Commission  
Office of the Secretary

Re: Higher Ground LLC  
Notification of Commencement of Operation, Certification, and Annual Report for  
Blanket Earth Station License (granted January 18, 2017)  
IBFS File No. SES-LIC-20150616-00357; Call Sign E150095

Dear Ms. Dortch:

Higher Ground LLC (“Higher Ground”) hereby requests that the information denoted with the symbols [ ] in the attached Annual Report for Blanket Earth Station License (the “Report”) be withheld from public disclosure pursuant to Sections 0.457 and 0.459 of the Commission’s Rules, 47 C.F.R. §§ 0.457, 0.459. This information is commercially sensitive information that may be withheld from public disclosure under Exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4). Consistent with this request, Higher Ground has labeled the Report “CONFIDENTIAL – NOT FOR PUBLIC INSPECTION.”

In support of this request, Higher Ground provides the following information, as required by Sections 0.457(d)(2) and 0.459(b) of the Commission’s Rules.

1. Information for Which Confidentiality Is Requested. Higher Ground is requesting that the information denoted with the symbols [ ] in the Report be withheld from public disclosure. The information for which Higher Ground is seeking confidential treatment is the total number of terminals the company has in service.

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2. Proceeding/Reason for Submission. Higher Ground is submitting this information in its Annual Report for Blanket Earth Station License, IBFS File No. SES-LIC-20150616-00357, Call Sign E150095.

3. Nature of Confidential Information. The information (described in (1) above) is commercially sensitive information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has long recognized that, for purposes of Exemption 4, “records are ‘commercial’ as long as the submitter has a commercial interest in them.” *Robert J. Butler*, 6 FCC Rcd 5414, 5415 (1991), citing *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *American Airlines v. National Mediation Board*, 588 F.2d 863, 868 (2d Cir. 1978).

4. Competitiveness of Market. The commercial information in question derives from and relates to Higher Ground’s provision of satellite-based communications services and thus “concerns a service subject to competition.” 47 C.F.R. § 0.459(b)(4).

5. Harm from Disclosure. The commercial information in the enclosed response is confidential because its release would likely cause competitive harm to Higher Ground by allowing its competitors to characterize Higher Ground’s business in an unfair manner. The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment. Rather, “[a]ctual competition and the likelihood of substantial competitive injury” is sufficient to bring commercial information within the realm of confidentiality.” *Public Citizen Health Research Group*, 704 F.2d at 1291, quoting *Gulf & Western Industries v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979).

6. Measures Taken To Prevent Unauthorized Disclosure. Higher Ground treats the information as confidential and proprietary information and does not publicly disclose this information.

7. Previous Disclosure. Higher Ground has not publicly disclosed the information for which it is seeking protection. Its previous report addressed only devices in beta-testing.

8. Requested Duration of Nondisclosure. The enclosed information should never be released for public inspection, as it contains commercially sensitive, confidential information, the release of which could adversely affect Higher Ground’s competitive position.

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For the foregoing reasons, Higher Ground respectfully requests that the Commission withhold from public inspection the specified information in the enclosed response. Should you need additional information with regard to this request, please contact the undersigned.

Respectfully submitted,

/s/ Adam D. Krinsky  
Adam D. Krinsky