

May 30, 2012

Office of Engineering & Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Request for Non-Disclosure/Confidentiality
File No. 0387-EX-PL-2011; Call Sign: WF2XYA**

Ladies and Gentlemen:

Pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459 (2010), Cognitive Data Dispatch LLC ("CDD") respectfully asks that the enclosed "First Progress Report of Experimental Operations" be withheld from public inspection and afforded confidential treatment in accordance with Section 552(b)(4) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and Sections 0.457(d)(2) and 0.459(b) of the Commission's Rules, 47 C.F.R. §§ 0.457(d)(2), 0.459(b)(2010). Please note that a version of the First Progress Report of Experimental Operations suitable for public disclosure is also being submitted.

Section 552(b)(4) of the Freedom of Information Act permits an agency to withhold from public disclosure any information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Section 0.457(d)(2) of the Commission's Rules allows persons submitting materials that they wish withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure. 47 C.F.R. § 0.457(d)(2). The requirements governing such requests are set forth in Section 0.459(b).

In accordance with Section 0.459 of the Commission's Rules, this request is supported by the following showing:

1. Identification of the specific information for which confidential treatment is sought:

CDD seeks to maintain confidentiality for the following item:

First Progress Report of Experimental Operations filed in association with File No. 0387-EX-PL-2011 and call sign WF2XYA ("Report").

2. Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission:

File No. 0387-EX-PL-2011 and call sign WF2XYA

3. Explanation of the degree to which the information is commercial or financial or contains a trade secret or is privileged:

The Report contains detailed information concerning the company's efforts to design and develop a new and innovative point-to-point communications system. The confidential information provided is sensitive commercial data of the type that businesses normally keep confidential and that the company in fact keeps confidential. *See* 5 U.S.C. § 552(b)(4). CDD has not announced or advertised this effort to the public and all previous disclosures of such information to third parties has been limited; for example, all participants in the development work are subject to non-disclosure requirements.

Thus, the Report contains information about the company's business plans that is clearly "commercial" and "financial" in nature. *See Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings). In addition, the information provided is "confidential." Under well-settled case law, such material "is 'confidential' . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted); *see also Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

4. Explanation of the degree to which the information concerns a service that is subject to competition:

The information contained in the Report pertains to the development of an innovative communications system. The communications hardware, software, and service industries are extremely competitive as are most of the companies that utilize such hardware, software, and services. Many different companies are researching, testing and designing devices and systems that will utilize a variety of technologies for data communications.

5. Explanation of how disclosure of the information could result in substantial competitive harm:

As noted above, the development of communications technologies and services is extremely competitive. The Report addresses activities to date and likely future avenues of research. Premature disclosure of information currently held in confidence could allow others to benefit unfairly from the investment made by CDD and possibly to undercut CDD's efforts.

Moreover, public disclosure of this Report will likely cause substantial harm to the company's competitive position. Given the highly competitive nature of the areas in which CDD competes – and the marketplace for the services and hardware under development –

this information could easily be used by competitors to enhance their market position at CDD's expense. Under these circumstances, it is "virtually axiomatic" that the information qualifies for withholding under Exemption 4 of the Freedom of Information Act, *see National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976), and under Sections 0.457(d)(2) and 0.459(b).

6. Identification of any measures taken by the submitting party to prevent unauthorized disclosure:

As noted above, CDD has not announced or advertised these efforts to the public and all previous disclosures of such information to third parties has been limited and pursuant to measures designed to maintain confidentiality.

CDD protects the information through internal policies designed to keep proprietary information and other information subject to non-disclosure obligations confidential; these include the use of training, agreements regarding the use of information, and physically securing material containing confidential information.

7. Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:

Information concerning the general principles pertaining to the use of HF radio communications is available through books, periodicals, and websites. The information set forth in the enclosed materials, however, is treated by CDD as confidential business information and its confidential business information is not made publicly available except within CDD, its corporate parent and those associated with the development effort who are under an obligation to maintain confidentiality.

8. Justification of the period during which the submitting party asserts that material should not be available for public disclosure:

CDD respectfully requests that this information be accorded confidential treatment until such time as it is publicly disclosed by CDD. An indefinite period of confidentiality is required because CDD cannot predict at this time when, or if, the results the experimentation will be made available in hardware, software, or services for sale to, or use by, the public or will be announced publicly.

9. Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

As a final matter, should the Commission deny this request for confidentiality, CDD respectfully asks that the document identified in this request be returned in accordance with Section 0.459(e) of the Commission's Rules, 47 C.F.R. §§ 0.459(e)(2010).

If you should have any questions or need further information, please contact either me at (312) 601-1861 (telephone), (312) 601-7806 (facsimile) or gregory.eickbush@cognitivedatadispatch.com (email) or contact our attorney David E.

Hilliard of Wiley Rein LLP at 202-719-7058 (telephone), 202-719-7049 (facsimile) or dhilliard@wileyrein.com (email).

Respectfully submitted,



Gregory Eickbush
Chief Operating Officer