



January 12, 2016

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

Re: Request for Confidential Treatment, ELS File No. 0809-EX-PL-2015

Dear Ms. Dortch:

Pursuant to Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), Skycast Services LLC ("Skycast") hereby requests confidential treatment of the antenna diagrams submitted today in connection with the above-referenced experimental license application (the "Application"). In support of this request, Skycast states as follows:

- (1) **Identification of the specific information for which confidential treatment is sought.** Skycast requests that the Commission withhold from public inspection, and afford confidential treatment to, the antenna diagrams being submitted today in connection with the Application ("Confidential Material").
- (2) **Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.** The Application is a request for experimental authorization being submitted pursuant to Part 5 of the Commission's rules, 47 C.F.R. Part 5. The Application was submitted on FCC Form 442, which incorporates a specific mechanism through which applicants may request confidential treatment of their submissions. This reflects the Commission's recognition of the potential for confidential information to be included in such applications.
- (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 the specific manner in which Skycast intends to deploy its experimental antennas. Public disclosure of this information could place Skycast at a competitive disadvantage vis-à-vis its competitors, and damage Skycast's position in the marketplace. The Commission has long recognized that 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).

- (4) **Explanation of the degree to which the information concerns a service that is subject to competition.** The Confidential Material concerns Skycast's efforts to develop communications solutions. The communications marketplace is subject to robust competition from numerous entities, as the Commission has recognized. For this reason (among others), FCC Form 442 expressly permits applicants to request confidential treatment of information submitted in connection with their applications.
- (5) **Explanation of how disclosure of the information could result in substantial competitive harm.** As discussed above, the Confidential Material contains sensitive and proprietary commercial information. Skycast 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 Skycast's plans and could allow competitors to unfairly benefit from Skycast's business efforts.
- (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 Skycast that is not bound by confidentiality obligations. Skycast 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 without understandings that those third parties would keep the information confidential.
- (8) **Justification of the period during which the submitting party asserts that material should not be available for public disclosure.** Skycast 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 Skycast.
- (9) **Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.** Skycast 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. Skycast 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). Skycast 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 Skycast's competitive position. For this reason, disclosure of the Confidential Material also would encourage Skycast and others "to be less forthcoming in their submissions, out of concern both for appearances and their own financial interests." *Id.* at 29-30.

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

Sincerely yours,

/s/ Nathan Wright

Nathan Wright
Vice President