



Jan 5, 2023

Federal Communications Commission
Office of Engineering and Technology
Attn: Nimesh Sangani
45 L Street, NE
Washington, DC 20554

**Subject: Confidentiality Request
STA File Number 2037-EX-ST-2022**

Dear Mr. Sangani,

Consistent with sections 0.457 and 0.459 of the FCC rules,¹ ABL Space Systems Company (“ABL”) requests the Commission treat certain information submitted in the supplemental response filed concurrently with this letter as confidential and not subject to public inspection. The enclosed information qualifies as “commercial or financial information” that “would customarily be guarded from competitors,”² regardless of whether the materials are protected from disclosure by a privilege. The information is closely held by ABL, is not available to the public, and is not revealed except under cover of confidentiality.³ ABL therefore requests that the Commission “not permit the inspection” of the supplement.⁴

In support of this request and consistent with section 0.459(b) of the FCC rules,⁵ ABL makes its request for confidential treatment based on the following information.

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

ABL seeks confidential treatment for the Mission_Overview_ABL_Demo_1_V2 filed concurrently with this letter.

¹ See 47 C.F.R. §§ 0.457, 0.459.

² *James A. Kay, Jr.*, Decision, 17 FCC Rcd 1834 ¶ 23 (2002).

³ See 47 C.F.R. § 0.457(d); *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (“[W]e conclude that financial or commercial information provided to the Government on a voluntary basis is ‘confidential’ for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by the person from whom it was obtained.”) (“*Critical Mass Energy Project*”).

⁴ 47 C.F.R. § 0.451.

⁵ See 47 C.F.R. § 0.459(b).

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

The relevant proceeding is STA file number 2037-EX-ST-2022, an experimental special temporary authority application for the ABL RS1 launch vehicle. When reviewing the application, FCC staff requested the Mission_Overview_ABL_Demo_1_V2.

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

The Mission_Overview_ABL_Demo_1_V2 contains specific technical and operational information relating to ABL's RS1 rocket, including details about mission design and mission parameters. This information is sensitive commercial data that businesses normally keep confidential to protect not only corporate interests but also national security interests⁶ and includes trade secrets.⁷

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

ABL is a startup attempting to develop innovative and competitive launch-service solutions while other established service providers engage similarly.

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

The Mission_Overview_ABL_Demo_1_V2 is sensitive. It details the commercial goals and progress of ABL's design, procurement, and mission plans. Public disclosure of the confidential information would also diminish the value of ABL's efforts by unfairly enabling others to appropriate ABL's efforts and develop similar processes, services, and/or technologies. This risk of appropriation is even greater given the highly competitive nature of the area in which ABL competes.

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

ABL has taken steps to keep confidential the Mission_Overview_ABL_Demo_1_V2, including limiting the number of people involved in ABL's RS1 mission planning and launch-vehicle development and requiring all third parties involved to execute non-disclosure agreements.

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 Mission_Overview_ABL_Demo_1_V2 is not publicly available and has only been disclosed to third parties consistent with non-disclosure agreements.

⁶ See 5 U.S.C. § 552(b)(4).

⁷ See *Public Citizen Health Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983) (defining a trade secret for purposes of the Freedom of Information Act as a "secret, commercially valuable . . . process or device that is used for the making . . . of trade commodities and that can be said to be the end product of either innovation or substantial effort"); see also *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 ¶ 3 (1998).

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

ABL respectfully requests that the Mission_Overview_ABL_Demo_1_V2 be withheld from public inspection. An indefinite period of confidentiality would protect ABL's evolving business plans and strategies.

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

The timing and progress of ABL's design and development process, and its ability to maintain the confidentiality of the test plans, will substantially contribute to the success of the proposed launch service. And the premature disclosure of ABL's design, test plan, and service functionality would harm the competitive position of ABL.

Additionally, denial of this request would impair the Commission's ability to obtain this type of voluntarily disclosed information in the future, hindering the agency's application review process. Encouraging cooperation with the government by parties having information useful to officials and enhancing a government agency's ability to obtain confidential information are the legislative intent for developing exemptions from the Freedom of Information Act.⁸ The U.S. Court of Appeals for the D.C. Circuit has recognized a "private interest in preserving the confidentiality of information that is provided to the Government on a voluntary basis."⁹ If the confidentiality request is denied, ABL requests that the Commission return the supplement.¹⁰

Please direct any questions to the undersigned.

Sincerely,

Blaine Riley

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⁸ See *Critical Mass Energy Project*, 975 F.2d at 878 ("Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government's] interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation."); see also *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 147-48 (D.C. Cir. 2001).

⁹ *Critical Mass Energy Project*, 975 F.2d at 879.

¹⁰ See 47 C.F.R. § 0.459(e).