

_____, 2023

REQUEST FOR CONFIDENTIAL TREATMENT

Via OET Experimental Licensing System – Public Redacted Version
Via Federal Express – Confidential Version

Marlene H. Dortch, Secretary
Federal Communications Commission
9050 Junction Drive
Annapolis Junction, MD 20701

ATTN: Anthony Serafini, Chief, Experimental Licensing Branch

Re: RADA Technologies, LLC
Reference No. 79476

Dear Ms. Dortch and Mr. Serafini,

RADA Technologies, LLC (“RADA”) hereby encloses for filing a Confidential version of its above-referenced RPS Investigation Report (the “Confidential Report”) in connection with the dismissal of its application for an experimental license, File No. 1534-EX-ST-2023. The Confidential Report contain sensitive technical information and are therefore sent to you for filing pursuant to Sections 0.457 and 0.459 of the Commission’s rules. The redacted, public version of this filing (the “Public Report”) is also being filed via the Experimental Licensing System. RADA will submit a new application for experimental license, in accordance with the conclusions of the Confidential Report.

RADA respectfully requests that, pursuant to 47 C.F.R. § 0.457 and § 0.459, the Commission withhold from public inspection and accord confidential treatment to the Confidential Report. The documents contain commercial information that fall within Exemption 4 of the Freedom of Information Act (“FOIA”).¹ Additionally, as the radio facilities to be tested under the proposed experimental license are intended to be used by the U.S. military, RADA respectfully submits that the public interest is further served by limiting publicly-available information related to the defense communications technologies concerned.

Exemption 4 of FOIA provides that the public disclosure requirement of the statute “does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential.”² The unredacted information contained in the Confidential Report constitutes trade secret and commercial information, which is “of a kind that would not

¹ 5 U.S.C. § 552(b)(4).

² *Id.*

customarily be released to the public.”³ The Confidential Report includes details regarding the investigation of operational characteristics of RADA’s product; such information could readily be used by RADA’s competitors to the disadvantage of RADA. In addition, RADA treats the information in the Confidential Report as private, and submits this information to the Commission in confidence, in order to resolve concerns that were raised with respect to operation on the frequencies first proposed in File No. 1534-EX-ST-2023.⁴

Under the recent Supreme Court decision in *Food Marketing Institute v. Argus Leader Media*, this is sufficient to show that the information is “confidential” under Exemption 4 of FOIA. The submitter is not required to show that the information’s disclosure is likely to cause substantial competitive harm. Rejecting such a requirement as inconsistent with the plain text of the FOIA statute, the Court clarified: “At least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.”⁵ Nonetheless, because the Commission’s rules ostensibly necessitate a showing of substantial competitive harm,⁶ RADA addresses that prong of the analysis below.

In support of this request and pursuant to 47 C.F.R. § 0.459(b), RADA hereby states as follows:

1. Identification of Specific Information for Which Confidential Treatment Is Sought (47 C.F.R. § 0.459(b)(1))

RADA seeks confidential treatment of the unredacted Confidential Report, including the Exhibits thereto. Specifically, the Confidential Report contains commercial, technical information, including information related to the operation of the RADA radio product to be tested, including information regarding certain hardware issues.

2. Description of Circumstances Giving Rise to the Submission (47 C.F.R. § 0.459(b)(2))

The information in the Confidential Report is being submitted to the Commission in connection with the submission of a new experimental license application for the subject radio product, with modifications. The information in the Confidential Report regarding the investigation results would allow competitors to derive other information regarding the specifications of RADA’s products.

3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (47 C.F.R. § 0.459(b)(3))

The information redacted from the Confidential Report includes technical data of RADA, particularly with respect to a radio product to be tested for possible sale to and use by the Department of Defense. This constitutes sensitive commercial information “which would customarily be guarded

³ See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

⁴ See *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2361 (2019).

⁵ *Id.* at 2366.

⁶ 47 C.F.R. § 0.459(b)(5).

from competitors.”⁷

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (47 C.F.R. § 0.459(b)(4))

RADA is a provider of radar and various other radio-based products and services. As such, it is subject to a high degree of competition, including from manufacturers of radio equipment and other defense contractors.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (47 C.F.R. § 0.459(b)(5))

The Confidential Report contains financial information that could be used by competitors to RADA’s detriment; widespread knowledge of RADA’s findings concerning its products would provide its competitors with advantages in their product designs and engineering relative to RADA. Disclosure of that information would thereby cause substantial competitive harm.⁸

6. Identification of Any Measures Taken by the Submitting Party to Prevent Unauthorized Disclosure (47 C.F.R. § 0.459(b)(6))

RADA makes the results of testing and investigations concerning its products, especially those intended for military uses, known only to those employees and advisors who have a need to know the subject matter, and those employees and advisors are aware of the confidential and sensitive nature of the 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 (47 C.F.R. § 0.459(b)(7))

RADA has not previously disclosed the information at issue to the public or to third parties, except for employees or advisors with a need to know such information, pursuant to appropriate confidentiality agreements.

8. Justification of Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (47 C.F.R. § 0.459(b)(8))

RADA requests that the data in the Confidential Report be treated as confidential indefinitely. This period is necessary due to the sensitive nature of the information therein.

Should you have questions, please contact the undersigned.

Respectfully submitted,

⁷ *Id.* at § 0.457.

⁸ *See Nat’l Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Christine McLaughlin
Counsel to RADA Technologies, LLC