

REQUEST FOR CONFIDENTIAL TREATMENT

November 6, 2024

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VIA ELS AND UPS

Anthony Serafini
Chief, Experimental Licensing Branch
Office of Engineering and Technology
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Request for Confidentiality Re: ELS File No. 1052-EX-CN-2024

Dear Mr. Serafini:

Anduril has filed with the Federal Communications Commission (“FCC”) an application, ELS File No. 1052-EX-CN-2024, seeking to authorize experimental testing near San Clemente, California. Much of the information contained in this application is sensitive from a commercial, competitive, and/or financial perspective, and some also implicates national security interests (the “Confidential Information”); Anduril would not reveal this information to the public, to its competitors, or to other third parties in the normal course of business. Anduril therefore respectfully requests that the Commission withhold from public inspection and afford confidential treatment to the narrative document of Anduril’s application pursuant to the Federal Communications Commission’s rules relating to public information and inspection of records¹ and in accordance with the Freedom of Information Act (“FOIA”).²

Section 552(b)(4) of the Freedom of Information Act (“FOIA Exemption 4”) 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.”³

¹ See, e.g., 47 C.F.R. §§ 0.457, 0.459. See also *In re Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816 (1998) (“*Confidential Information Order*”).

² 5 U.S.C. § 552.

³ 5 U.S.C. § 552(b)(4).

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Additionally, section 154(j) of the Communications Act permits the FCC to withhold from public access any “records . . . containing secret information affecting the national defense.”⁴

Sections 0.457(d) and 0.459 of the Commission’s rules allow persons to file a request for non-disclosure when submitting materials that they request be withheld from public inspection.⁵ Pursuant to section 0.459(b), if a party demonstrates that the materials contain trade secrets or privileged or otherwise confidential information, the materials will not be made routinely available for inspection.⁶

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules,⁷ Anduril submits as follows:

(1) Identification of the specific information for which confidential treatment is sought.⁸

Anduril requests confidential treatment of this application for experimental authority filed with this letter and its attachments other than this request. The submission contains or reveals highly sensitive information not available to the public. Pursuant to section 0.459 of the Commission’s rules, Anduril requests that this information not be made available for public inspection.

(2) Description of the circumstances giving rise to the submission.⁹

Anduril is a private, for-profit engineering company devoted to technology development for security and defense applications by the U.S. Government. Approximately 80% of Anduril’s business is for the U.S. Government. The current application contains Confidential Information that is commercial or proprietary in nature and relates to governmental and military technological development priorities of the United States.

⁴ 47 U.S.C. § 154(j).

⁵ 47 C.F.R. §§ 0.457(d), 0.459.

⁶ *See id.* § 0.457(d).

⁷ *Id.* § 0.459(b).

⁸ *Id.* § 0.459(b)(1).

⁹ 47 C.F.R. § 0.459(b)(2).

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(3) *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.*¹⁰

The Commission has recognized that, for purposes of Exemption 4, “records are ‘commercial’ as long as the submitter has a commercial interest in them.”¹¹ The Confidential Information contains sensitive trade secrets and is commercially, competitively, and financially sensitive regarding Anduril’s products and services, and is thus protected from disclosure. This information, which consists primarily of transmission parameters for Anduril’s operations as well as information about the identities of Anduril’s customers, is highly sensitive business information “which would customarily be guarded from competitors.”¹² Anduril protects this information in all other instances as proprietary and highly confidential. Accordingly, the Confidential Information constitutes sensitive “commercial” information that may be withheld under FOIA Exemption 4.

In addition, the Confidential Information relates to governmental and military technological development priorities of the United States. Information about these priorities could have national security implications if made public. This information, therefore, is also protected from disclosure under Section 154(j) of the Communications Act.¹³

(4) *Explanation of the degree to which the information concerns a service that is subject to competition.*¹⁴

Anduril faces competition from many other defense companies. The Confidential Information contains proprietary and non-public information about Anduril’s technology and operations that, if publicly disclosed, could put Anduril at a competitive disadvantage with regard to competitors in the same space. Disclosure of the Confidential Information could also expose it to foreign governments.

¹⁰ 47 C.F.R. § 0.459(b)(3).

¹¹ *In re Robert J. Butler*, Memorandum Opinion and Order, 6 FCC Rcd 5414, 5415 ¶ 12 (1991) (citing *Pub. Citizen Health Rsch. Grp. v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *Am. Airlines, Inc. v. Nat’l Mediation Bd.*, 588 F.2d 863, 868 (2d Cir. 1978)).

¹² *See Confidential Information Order*, 13 FCC Rcd at 24863, Appendix B (amended language to 47 C.F.R. § 0.457).

¹³ 47 U.S.C. § 154(j) (permitting the FCC to withhold confidential information “affecting the national defense”).

¹⁴ 47 C.F.R. § 0.459(b)(4).

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(5) Explanation of how disclosure of the information could result in substantial competitive harm.¹⁵

The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment.¹⁶ Rather, “[a]ctual competition and the likelihood of substantial competitive injury’ is sufficient to bring commercial information within the realm of confidentiality.”¹⁷ Additionally, the Supreme Court has ruled that a showing of substantial competitive harm is not necessary to come within Exemption 4.¹⁸

Public release of the Confidential Information would likely cause competitive harm to Anduril by providing competitors and the public with sensitive business information not ordinarily available to the public. Exposure of the Confidential Information to competitors and to other governments could also diminish the value of Anduril’s operations by reducing the competitive advantage it may afford to United States companies and to the government and people of the United States.

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.¹⁹

Anduril consistently safeguards the Confidential Information in its application as highly confidential. The Confidential Information is known only to those personnel who have a need to know the subject matter, and personnel, both internal and external, are aware of the confidential and sensitive nature of the information and are required to protect that information as well.

(7) Identification of whether the information is available to the public and the extent of any previous disclosure of information to third parties.²⁰

Anduril has not disclosed the Confidential Information to the public or third parties other than as addressed above, nor does it intend to do so.

¹⁵ 47 C.F.R. § 0.459(b)(5).

¹⁶ *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 (quoting *Gulf & Western Indus. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

¹⁷ *Id.*

¹⁸ *See Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2360, 2366 (2019).

¹⁹ 47 C.F.R. § 0.459(b)(6).

²⁰ *Id.* § 0.459(b)(7).

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(8) Justification of period during which the submitting party asserts that the material should not be available for public disclosure.²¹

Given the proprietary and non-public nature of the Confidential Information, Anduril does not foresee a date after which it would no longer consider this information to be highly confidential, and requests that confidential treatment apply indefinitely.

(9) Other information that Anduril believes may be useful in assessing whether its request for confidentiality should be granted.²²

Under applicable precedent, the information provided by Anduril on a confidential basis should be protected from public disclosure. *First*, exemption 4 of FOIA shields from disclosure information that is: (1) a trade secret, commercial, or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The Confidential Information clearly satisfies this test. *Second*, the Confidential Information implicates national security interests and must not be compromised; the Communications Act specifically identifies this type of information as properly subject to protection from disclosure by the Commission.

For these reasons, Anduril respectfully requests that the Commission grant confidential status to the Confidential Information and withhold it from public inspection.

Please direct any questions to the undersigned.

Sincerely,

s/ Trey Hanbury
Trey Hanbury
Counsel for Anduril

²¹ 47 C.F.R. § 0.459(b)(8).

²² *Id.* § 0.459(b)(9).