

***BY HAND DELIVERY***

June 6, 2018

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Request for Confidential Treatment of CONFIDENTIAL Information  
Provided by True Wireless, LLC in the Application for Review of Bureau  
Denial of True Wireless, LLC's Request for Review**

Dear Ms. Dortch:

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, True Wireless, LLC ("True Wireless") hereby requests confidential treatment of certain information that it is providing to the Commission as part of its written Application for Review of Bureau Denial of True Wireless, LLC's Request for Review. This confidential information consists of the following:

- (i) Customer proprietary network information for certain True Wireless subscribers;
- (ii) Information regarding the results of a USAC decision finding alleged intra-company duplicate subscribers receiving Lifeline-supported service, including specific numbers of alleged duplicate subscribers; and
- (iii) Information regarding True Wireless' business practices and procedures regarding the certification of subscribers eligible for Lifeline support, including information describing the types of screens and checks True Wireless uses to detect possibly fraudulent efforts by third parties to obtain duplicate services.

This information is being provided to the Commission and True Wireless requests that they be withheld from routine public inspection, as the information is of a commercially-sensitive nature, contains trade secrets, and True Wireless has not previously made this information public. The pertinent sections of each document have been clearly marked "**CONFIDENTIAL—NOT FOR PUBLIC INSPECTION,**" as instructed on the FCC Secretary's web page.

Section 0.457(d) of the Commission's rules provides that this information is automatically protected under the Commission's confidentiality procedures because it

contains trade secret information.<sup>1</sup> Section 0.457 of the Commission's rules also requires that the Commission treat as confidential documents that contain "trade secrets and commercial or financial information ... not routinely available for public inspection."

These Commission regulations implement and incorporate exemptions from the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. *See* 47 C.F.R. § 0.457(d). Under these exemptions, information is exempt from public disclosure if it is (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential in nature. 5 U.S.C. § 552(b)(4). The information being provided by True Wireless is exempt from public disclosure under the aforementioned exemptions and the FCC's regulations because it constitutes commercial and financial information, obtained from a person, which is confidential in nature.<sup>2</sup>

Similarly, Section 1905 of Title 18 of the United States Code makes it unlawful for federal government agencies or employees to disclose information relating to "the trade secrets, processes, operations, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm partnership, corporation, or association...." Information that is exempt from release under Exemption 4 of the FOIA is prohibited from being disclosed, under 18 U.S.C. § 1905, unless disclosure is "authorized by law" by another statute other than FOIA.<sup>3</sup> Because no other statute authorizes the release of the information at issue here, disclosure of the information is prohibited by the criminal provisions of 18 U.S.C. § 1905.<sup>4</sup>

Nevertheless, out of an abundance of caution, True Wireless is also making a showing that the information would also qualify for protection pursuant to Commission rule 0.459.<sup>5</sup> As required in rule 0.459, True Wireless is providing below a statement of the reasons for withholding the information marked confidential, as well as a statement of facts underlying the information.

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<sup>1</sup> 47 C.F.R. § 0.459(a) ("If the materials are specifically listed in § 0.457, such a request is unnecessary.").

<sup>2</sup> Under Exemption 4 of the FOIA, the terms "commercial" and "financial" are to be given their "ordinary meaning," and thus include information in which a submitter has a "commercial interest." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *accord, Washington Research Project, Inc. v. HEW*, 504 F.2d 238, 244 n.6 (D.C. Cir. 1974), *cert denied*, 421 U.S. 963 (1975). "Commercial interest" has been interpreted broadly to include anything "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978). The term "person," for FOIA purposes, includes entities such as True Wireless. *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 830 F.2d 871 n.15 (D.C. Cir. 1987) ("For FOIA purposes a person may be a partnership, corporation, association, or public or private organization other than an agency.").

<sup>3</sup> *See Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (Exemption 4 and 18 U.S.C. § 1905 are "coextensive" and § 1905 prohibits the disclosure of confidential business information unless release is authorized by a federal statute other than FOIA); *see also* 47 C.F.R. § 0.457(d).

<sup>4</sup> *See CAN Fin. Corp. v. Donovan*, 830 F.2d 1132, 1151 (D.C. Cir. 1987).

<sup>5</sup> 47 C.F.R. § 0.459.

**(1) Identification of the specific information for which confidential treatment is sought;**

True Wireless seeks to withhold from public inspection and otherwise seeks confidential treatment of the confidential information described on page 1 of this letter. Each page of the documents containing confidential information has been marked “**CONFIDENTIAL—NOT FOR PUBLIC INSPECTION**”.

**(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;**

True Wireless is providing the confidential information to the Commission in support of its Application for Review of a decision by the Wireline Competition Bureau.

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

The confidential information consists of True Wireless’ subscriber numbers, information regarding the Bureau’s decision and an underlying decision by the Universal Service Administrative Company (“USAC”) finding alleged intra-company duplicate subscribers receiving Lifeline-supported services True Wireless, and detailed description of the policies and procedures True Wireless has implemented in accordance with Commission rules. In addition, some of the confidential information consists of subscribers’ customer proprietary network information (“CPNI”), the disclosure of which is highly regulated by Commission rules and is otherwise of an extremely confidential and proprietary nature. True Wireless has not previously publicly disclosed any of this information.

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

The market of providing Lifeline service, which is the subject of the confidential information, is highly competitive. Recent Commission actions have only heightened the competitive pressures in the market for Lifeline services.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm;**

There is a high risk that True Wireless would suffer competitive harm if its confidential business practices and trade secret information were made available to its competitors. Exposure of the specific results of the underlying USAC decision could aid True Wireless’ competitors, to True Wireless’ competitive detriment. In addition, exposure of the specific processes that True Wireless uses to protect itself from fraud by third parties could aid such third parties in circumvention those processes, to True Wireless’ competitive detriment. Moreover, disclosure of True Wireless’ subscriber information would cause consumers to complain and/or consumers disconnecting from True Wireless’ service, and moreover, would likely constitute a violation of

the Commission's CPNI rules on the part of the disclosing entity or person, and perhaps other privacy laws.

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

True Wireless consistently seeks to keep the above referenced confidential information from being publicly disclosed, only shares such information with its attorneys and any other professional advisors on a need-to-know basis.

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

As far as True Wireless is aware, this confidential information has never been made available to or otherwise disclosed to the public except to attorneys and similar advisors on a need-to-know basis.

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

True Wireless does not foresee a determinable date or timeframe after which it will no longer consider this information to be highly confidential, commercially-sensitive trade secret information. Rather, True Wireless expects that such information will be highly confidential, commercially-sensitive trade secret information so long as True Wireless is in business.

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The foregoing establishes that this confidential information is subject to confidential treatment pursuant to the FCC's rules at 47 C.F.R. §§ 0.457, 0.459, and 18 U.S.C. § 1905, and that it contains information containing trade secrets, and commercial and financial information in a company-specific manner that has not been previously made public.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Danielle Frappier".

Danielle Frappier