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Federal Communications Commission
Office of the Secretary

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BY HAND

Stamp and Return

April 24, 2019

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

Re: Request for Confidential Treatment, CG Docket No. 03-123
Clarity Products, LLC Internet-Based TRS Certification Application

Dear Ms. Dortch:

Clarity Products, LLC ("CLARITY"), by its attorney, respectfully requests that pursuant to FCC Rule 0.459, 47 C.F.R. § 0.459, the Commission withhold from public inspection and afford confidential treatment to certain information contained in the attached application for Internet-based Telecommunications Relay Service ("IP TRS") certification and accompanying appendices (the "Application") in accordance with Section 552(b)(4) of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and FCC Rules 0.457(d)(2) and 0.459(b), 47 C.F.R. §§ 0.457(d)(2), 0.459(b). Accordingly, CLARITY submits by hand an unredacted copy of the Application, which should be afforded confidential treatment, and a redacted copy that the Commission may post for public inspection.

Section 552(b)(4) of FOIA 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." 5 U.S.C. § 552(b)(4). FCC Rule 0.457(d)(2) allows persons submitting materials that they wish withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure. 47 C.F.R. § 0.457(d)(2). The requirements governing such requests are set forth in Section 0.459(b).

In accordance with FCC Rule 0.459, this request is supported by the following:

- (1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)).* CLARITY seeks confidential treatment for highly-sensitive business data, which is contained after the heading **[BEGIN CONFIDENTIAL]** and before the close heading **[END CONFIDENTIAL]** (the "Confidential Information").
- (2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2)).* CLARITY filed the Application to request FCC approval to provide Internet Protocol Captioned Telephone Service ("IP CTS") pursuant to 47 C.F.R. §§ 64.604, 64.605, and 64.606.

(3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3)).* The Application contains sensitive commercial information that competitors could use to CLARITY's disadvantage. Any information is commercial so long as the party submitting the information has a "commercial interest" in it. *Pub. Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). The Confidential Information provided is sensitive commercial data of the type that businesses normally keep confidential and that CLARITY, in fact, keeps confidential. See 5 U.S.C. § 552(b)(4).

Thus, the request contains information about CLARITY's service that is clearly "commercial" and "financial" in nature. See *Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980) (courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings). In addition, the information provided is "confidential." Under well-settled case law, such material "is 'confidential' . . . if disclosure of the information is likely to have either of the following effects: (1) to impair the government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 764, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied*, 113 S. Ct. 1579 (1993).

The Confidential Information in the Application falls clearly within the definition of commercial. Competitors could use this information to enhance their market position at CLARITY's expense.

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4)).* Substantial competition exists in the IP TRS industry, which continues to grow due to technological advancements. The presence of competitors makes imperative the confidential treatment of sensitive commercial information.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5)).* As noted above, the IP TRS industry and the telecommunications industry as a whole are extremely competitive. Release of the Confidential Information in the Application could have a significant impact on CLARITY's commercial operations. If competitors or customers had access to this information, it could negatively affect CLARITY's ability to obtain potential customers.

Under these circumstances, it is "virtually axiomatic" that the information qualifies for withholding under Exemption 4 of FOIA, see *National Parks and Conservation Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976), and under Sections 0.457(d)(2) and 0.459(b).

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(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*. CLARITY limits access to Confidential Information in the Application to necessary personnel only. Also, CLARITY takes every precaution to ensure that this information is not released to the general public.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7))*. CLARITY has not made the Confidential Information in the Application available to the public and has not disclosed the Confidential Information to any third parties except pursuant to arrangements intended to maintain confidentiality.

(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8))*. CLARITY respectfully requests that the Commission withhold the Confidential Information in the Application from public inspection indefinitely.

Please contact the undersigned with any questions. Thank you for your assistance.

Sincerely,

/s/ Scott D. Delacourt
Scott D. Delacourt
Counsel for Clarity Products, LLC

Cc:

Suzanne Singleton, Chief, Disability Rights Office
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