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June 9, 2009

Scott D. Delacourt
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BY HAND DELIVERY AND VIA ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: CONFIDENTIAL INFORMATION
Viable Application for Certification to Interstate TRS Fund
CG Docket 03-123**

Dear Ms. Dortch:

By its attorneys, Viable, Inc. ("Viable") respectfully requests that, pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 and 0.459, the Commission withhold from public inspection and accord confidential treatment to a portion of a letter that Viable is submitting to supplement its September 22, 2008 application for certification ("Supplement") as a Video Relay Service, IP Relay Service, and IP Captioned Telephone Service ("IP-TRS") provider. The Supplement is being filed in both redacted and un-redacted form with a copy of this letter. The Supplement contains commercially sensitive information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

Exemption 4 permits parties to withhold from public information "trade secrets and commercial or financial information obtained from a person and privileged or confidential-categories of materials not routinely available for public inspection." *Id.* Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will either (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. See *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) (footnote omitted); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879-80 (D.C. Cir. 1992), *cert denied*, 507 U.S. 984 (1993).

Section 0.457(d)(2) allows persons submitting materials that they wish be withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure, pursuant to Section 0.459. In accordance with the requirements contained in Section 0.459(b) for such requests, Viable hereby submits the following:

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(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))*: Viable seeks confidential treatment for information contained in a single sentence within the Supplement. This sentence contains commercially sensitive information relating to a contractual relationship between Viable and one of its business partners. And this commercially sensitive information falls within Exemption 4 of FOIA.

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2))*: Viable submits this Supplement in connection with its application for FCC certification to the interstate TRS fund for the provision of IP-TRS.

(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 sentence in the Supplement contains sensitive commercial and financial information that competitors could use to Viable's disadvantage. The courts have given the terms "commercial" and "financial," as used in Section 552(b)(4), their ordinary meanings. *See Board of Trade v. Commodity Futures Trading Comm'n*, 627 F.2d 392, 403 & n.78 (D.C. Cir. 1980). The Commission has broadly defined commercial information, stating that "[c]ommercial' is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

The sentence in the Supplement contains commercial information regarding a contractual relationship between Viable and one of its business partners. The information contained in this sentence meets both definitions of "confidential." First, a decision not to treat this information as confidential could affect the Commission's ability to obtain necessary information in the future. Second, disclosure of this information likely will cause substantial harm to the competitive positions of Viable and its business partner.

(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. Other large players in the IP-TRS market include Sorenson Communications, Purple Communications, and Hamilton Relay. The presence of

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these large 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))*: Disclosure of certain information in the Supplement could have a significant impact on Viable's commercial operations. If business partners/customers or competitors had access to this information, it could negatively affect Viable's future negotiations with potential and existing business partners/customers. Specifically, business partners/customers could use this information to negotiate more favorable terms in their own business agreements. Competitors could use this information to better compete against Viable. Thus, 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).

(6) *Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))*: None of this information is provided to the public, and Viable will not provide this information to third parties except pursuant to agreements to maintain confidentiality.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))*: Viable has not made this information available to the public and has not disclosed this information to any third parties.

(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))*: Viable respectfully requests that the Commission withhold this information from public inspection indefinitely. On balance, the need to protect Viable from competitive harm as a result of disclosure of this information outweighs any benefit of public disclosure which, in the ordinary course of business, would not otherwise occur.

Accordingly, for the foregoing reasons, Viable respectfully requests that certain information contained in its Supplement be kept confidential and be withheld from public inspection at all times.

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

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Sincerely,

A handwritten signature in black ink, appearing to read "Scott D. Delacourt". The signature is written in a cursive style with a prominent initial "S" and a long horizontal stroke at the end.

Scott D. Delacourt
Counsel for Viable



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

**Re: Viable Application for Certification to Interstate TRS Fund
CG Docket 03-123**

Dear Ms. Dortch,

This letter supplements Viable, Inc.'s ("Viable's") September 22, 2008 application for certification as a Video Relay Service, IP Relay Service, and IP Captioned Telephone Service ("IP-TRS") provider. Specifically, this letter supplements Viable's original common carrier showing and reflects a correction of the company's address. In addition, the letter requests expedited processing and approval of Viable's application.

A confidential version of this letter is being filed with the FCC. This redacted version of the letter is being filed contemporaneously via ECFS. Viable's corresponding request for confidentiality is being filed with both the redacted and un-redacted versions of this letter.

Common Carrier Showing. Pursuant to discussions with Consumer and Governmental Affairs Bureau ("CGB") staff, Viable hereby supplements the common carrier showing made in its pending application. Specifically, Viable has received a Certificate of Authority as a resold interexchange carrier in the state of Maryland, which is attached. Consistent with FCC precedent, this certification demonstrates that Viable will offer service on a common carrier basis, as required by 47 C.F.R. § 64.606(a)(2)(vii).

Address Correction. Viable also takes this opportunity to update its address of record with the Commission to Viable, 5301 Marinelli Road, Rockville, MD 20852.¹

¹ In the original application, Viable asked the Commission to send mailing to 5320 Marinelli Road.

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Ms. Marlene Dortch

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Request for Expedited Grant. Viable respectfully requests that the FCC expedite processing and grant of its pending application for certification to participate in the Interstate TRS Fund. Viable's application was filed on September 22, 2008 and has been pending for nearly nine months. In that time, the only deficiency CGB staff have identified with Viable's application is the lack of a state certification to support Viable's representation that it will offer service on a common carrier basis. Viable has now been certified as a reseller of interexchange services by the state of Maryland, as demonstrated by the attached certificate. Accordingly, Viable's application is complete and grantable.

Delay in processing and granting Viable's application could result in material harm to Viable, its employees, and its customers in the deaf and hard-of-hearing community, up to and including potential interruption of service. Viable currently provides VRS under contract with an FCC certified VRS provider. In the absence of expeditious action, pursuant to its existing contract, Viable could be faced with a material impairment in its ability to provide service in the near term. **[REDACTED]**. If the FCC fails to approve Viable's application by that date, Viable's plans for investment and expansion will be jeopardized, freezing hiring, potentially initiating layoffs and, ultimately, leading to service disruptions and termination of service. This will significantly and unnecessarily harm Viable's deaf and hard-of-hearing customer base. Given the severity of this outcome, as well as Viable's satisfaction of all FCC certification criteria, including obtaining state certification to supplement Viable's showing that it will offer service on a common carrier basis, Viable urges the Commission to swiftly approve its application.

Please let us know if you have any questions or if additional information would be useful in your expeditious consideration and grant of Viable's application.

Sincerely,



Scott D. Delacourt

Counsel to Viable

cc: Catherine Seidel, Bureau Chief, CGB
Suzanne Tetreault, Acting Deputy Bureau Chief, CGB
Thomas Chandler, Chief, Disability Rights Office

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Gregory Hlibok, Staff Attorney, CGB

Attachment

STATE OF MARYLAND

COMMISSIONERS

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CHAIRMAN

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SUSANNE BROGAN
LAWRENCE BRENNER



PUBLIC SERVICE COMMISSION

#14, 6/3/09 AM; ML#116285, TE-9841

June 3, 2009

Scott D. Delacourt, Esquire
Wiley Rein LLP
1776 K Street NW
Washington, DC 20006

Dear Mr. Delacourt:

The Commission has reviewed the Application for authority to provide resold interexchange telecommunications services in Maryland filed on April 24, 2009, by Viable, Inc.

After considering this matter at the June 3, 2009 Administrative Meeting, the Commission authorized the Company to operate as a provider of resold interexchange telecommunications services.

By Direction of the Commission,

/s/ *Terry J. Romine*

Terry J. Romine
Executive Secretary

TJR/gjd