

Federal Communications Commission

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investigative guidelines if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 0.458 Nonpublic information.

Any person regulated by or practicing before the Commission coming into possession of written nonpublic information (including written material transmitted in electronic form) as described in §19.735–203(a) of this chapter under circumstances where it appears that its release was inadvertent or otherwise unauthorized shall be obligated to and shall promptly return the information to the Commission's Office of Inspector General without further distribution or use. See 47 CFR 19.735–203.

§0.459 Requests that materials or information submitted to the Commission be withheld from public inspection.

(a)(1) *Procedures applicable to filings in non-electronic proceedings.* Any person submitting information or materials to the Commission may submit therewith a request that such information not be made routinely available for public inspection. (If the materials are specifically listed in §0.457, such a request is unnecessary.) A copy of the request shall be attached to and shall cover all of the materials to which it applies and all copies of those materials. If feasible, the materials to which the request applies shall be physically separated from any materials to which the request does not apply; if this is not feasible, the portion of the materials to which the request applies shall be identified. In the latter circumstance, where confidential treatment is sought only for a portion of a document, the person submitting the document shall submit a redacted version for the public file.

(2) *Procedures applicable to filings in electronic proceedings.* In proceedings to which the electronic filing requirements set forth in §1.49(f) of this chapter apply, a party seeking confidential treatment of a portion of a filing must submit in electronic format either a redacted version of the document or an affidavit that it is impossible to submit

a redacted document consistent with the filing requirements of this section. Where a party demonstrates that even the fact of a filing must remain confidential, and that this is consistent with the requirements of this section, this affidavit may be filed in paper format under seal.

(3) Comments and other materials may not be submitted by means of the Commission's Electronic Comment Filing System (ECFS) with a request for confidential treatment under this section.

(4) The Commission may use abbreviated means for indicating that the submitter of a record seeks confidential treatment, such as a checkbox enabling the submitter to indicate that the record is confidential. However, upon receipt of a request for inspection of such records pursuant to §0.461, the submitter will be notified of such request pursuant to §0.461(d)(3) and will be requested to justify the confidential treatment of the record, as set forth in paragraph (b) of this section.

(b) Except as provided in §0.459(a)(3), each such request shall contain a statement of the reasons for withholding the materials from inspection (see §0.457) and of the facts upon which those records are based, including:

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

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

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

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

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

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

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

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

(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.

(c) Casual requests (including simply stamping pages “confidential”) which do not comply with the requirements of paragraphs (a) and (b) of this section will not be considered.

(d)(1) If a response in opposition to a confidentiality request is filed, the party requesting confidentiality may file a reply within ten business days. All responses or replies filed under this paragraph must be served on all parties.

(2) Requests which comply with the requirements of paragraphs (a) and (b) of this section will be acted upon by the appropriate custodian of records (see §0.461(d)(1)), who is directed to grant the request if it demonstrates by a preponderance of the evidence that non-disclosure is consistent with the provisions of the Freedom of Information Act, 5 U.S.C. 552. If the request for confidentiality is granted, the ruling will be placed in the public file in lieu of the materials withheld from public inspection.

(3) The Commission may defer acting on requests that materials or information submitted to the Commission be withheld from public inspection until a request for inspection has been made pursuant to §0.460 or §0.461. The information will be accorded confidential treatment, as provided for in §0.459(g) and §0.461, until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted.

(e) If the materials are submitted voluntarily (*i.e.*, absent any requirement by statute, regulation, or the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordinarily be returned (*e.g.*, an application will be returned if it cannot be considered on a confidential basis). Only in the unusual in-

stance where the public interest so requires will the materials be made available for public inspection. However, no materials submitted with a request for confidentiality will be returned if a request for inspection has been filed under §0.461. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection once the period for review of the denial has passed.

(f) If no request for confidentiality is submitted, the Commission assumes no obligation to consider the need for non-disclosure but, in the unusual instance, may determine on its own motion that the materials should be withheld from public inspection. *See* §0.457(d).

(g) If a request for confidentiality is denied, the person who submitted the request may, within ten business days, file an application for review by the Commission. If the application for review is denied, the person who submitted the request will be afforded ten business days in which to seek a judicial stay of the ruling. If these periods expire without action by the person who submitted the request, the materials will be returned to the person who submitted them or will be placed in a public file. Notice of denial and of the time for seeking review or a judicial stay will be given by telephone, with follow-up notice in writing. The first day to be counted in computing the time periods established in this paragraph is the day after the date of oral notice. Materials will be accorded confidential treatment, as provided in §0.459(g) and §0.461, until the Commission acts on any timely applications for review of an order denying a request for confidentiality, and until a court acts on any timely motion for stay of such an order denying confidential treatment.

(h) If the request for confidentiality is granted, the status of the materials is the same as that of materials listed in §0.457. Any person wishing to inspect them may submit a request for inspection under §0.461.

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(i) Third party owners of materials submitted to the Commission by another party may participate in the proceeding resolving the confidentiality of the materials.

[74 FR 14078, Mar. 30, 2009, as amended at 76 FR 24389, May 2, 2011]

§ 0.460 Requests for inspection of records which are routinely available for public inspection.

(a) Sections 0.453 and 0.455 list those Commission records which are routinely available for public inspection and the places at which those records may be inspected. Subject to the limitations set out in this section, a person who wants to inspect such records need only appear at the specified location and ask to see the records. Many such records also are available through the Commission's Web site, located at <http://www.fcc.gov> and the Commission's electronic reading room, located on its Web site at <http://www.fcc.gov/foia/e-room.html>. Commission documents listed in § 0.416 and § 0.445 are published in the FCC Record, and many such documents or summaries thereof are also published in the FEDERAL REGISTER.

(b) A person who wishes to inspect the records must appear at the specified location during the office hours of the Commission and must inspect the records at that location. (Procedures governing requests for copies are set out in § 0.465.) However, arrangements may be made in advance, by telephone or by correspondence, to make the records available for inspection on a particular date, and there are many circumstances in which such advance arrangements will save inconvenience. If the request is for a large number of documents, for example, a delay in collecting them is predictable. Current records may be in use by the staff when the request is made. Older records may have been forwarded to another location for storage.

(c) The records in question must be reasonably described by the person requesting them so as to permit their location by staff personnel. The information needed to locate the records will vary, depending on the records requested. Advice concerning the kind of information needed to locate par-

ticular records will be furnished in advance upon request. Members of the public will not be given access to the area in which records are kept and will not be permitted to search the files.

(d) If it appears that there will be an appreciable delay in locating or producing the records (as where a large number of documents is the subject of a single request or where an extended search for a document appears to be necessary), the requester may be directed to submit or confirm the request in writing in appropriate circumstances.

(e)(1) Written requests for records routinely available for public inspection under §§ 0.453 and 0.455 shall be directed to the Commission's copy contractor pursuant to the procedures set forth in § 0.465. Requests shall be captioned "Request For Inspection Of Records," shall be dated, shall list the mailing address, telephone number (if any) of the person making the request, and the e-mail address (if any) and for each document requested, shall set out all information known to the person making the request which would be helpful in identifying and locating the document. Written requests shall, in addition, specify the maximum search fee the person making the request is prepared to pay (*see* § 0.467).

(2) Written requests shall be delivered or mailed directly to the Commission's copy contractor (*see* § 0.465(a)).

(f) When a written request is received by the copy contractor, it will be date-stamped.

(g) All requests limited to records listed in § 0.453 and § 0.455 will be granted, subject to paragraph (k) of this section. Requests for records listed in those sections shall not be combined with requests for other records.

(h) The records will be produced for inspection at the earliest possible time.

(i) Records shall be inspected within 7 days after notice is given that they have been located and are available for inspection. After that period, they will be returned to storage and additional charges may be imposed for again producing them.

(j) In addition to the other requirements of this section, the following provisions apply to the reports filed