

December 27, 2013

ELECTRONIC FILING

Joe Dichoso, Chief
Equipment Authorization Branch, Laboratory Division
Office of Engineering and Technology
Federal Communications Commission
7435 Oakland Mills Road
Columbia, MD 21046-1609

**Re: The Boeing Company, Request for Confidential Treatment
FCC Identification Number H8V-BLK1 (Model: BLACK)**

Dear Mr. DiChoso:

The Boeing Company (“Boeing”), through its attorneys, hereby requests that the exhibits listed below and attached to the FCC Forms 731 for the H8V-BLK1 (Model: BLACK) be given confidential treatment and permanently withheld from public inspection pursuant to Section 0.459 of the Commission’s Rules, 47 C.F.R. § 0.459:

- Block Diagram
- Internal Photos
- Operational Description
- Parts List
- Tune Up Procedure
- Schematics
- Antenna Specifications
- Product Change Document

Boeing further requests that the exhibits listed below and attached to the FCC Forms 731 for the H8V-BLK1 be given temporary confidential treatment and withheld from public inspection for a period of 180 days:

- Test Set Up Photos
- External Photos

Boeing has developed its Black phone primarily for governmental agencies and their contractors to ensure that data and voice communications undertaken by their respective employees are transmitted and stored in a highly secure manner. Pursuant to the Freedom of Information Act (“FOIA”), public disclosure is not required for “trade secrets and commercial or financial information obtained from any person and privileged or confidential categories of materials not routinely available for public inspection.”¹ The commercial proprietary

¹ 5 U.S.C. § 552(b)(4); *see also* 47 C.F.R. § 0.457(d).

information contained within the exhibits falls squarely within this exemption from public disclosure.

Pursuant to Section 0.459(b) of the Commission's Rules, 47 C.F.R. § 0.459(b), the following information is provided in support of the request for confidential treatment. Boeing is submitting the confidential information to the Commission in support of an application for equipment certification.² The exhibits for which confidential treatment is sought contain Boeing trade secrets and proprietary information relating to the secure operation of the Black phone that Boeing has developed and for which it seeks certification.³ The information is also highly sensitive because it identifies operational and design elements of the product that facilitate the secure operation of the device and release of such information could assist third parties in defeating these security measures.⁴ The market for development of these products is very competitive.⁵ Due to the competitive environment for such products, release of this information to its competitors would harm Boeing.⁶ Boeing would lose the competitive benefit of the substantial resources it invested in the development of the product should the information contained in these exhibits be disclosed to its competitors.

It is customary for companies such as Boeing not to disclose the details of its designs, technologies and products to competitors or to the public, and Boeing has taken reasonable actions to keep these trade secrets confidential.⁷ Boeing employees sign agreements restricting their ability to disclose Boeing's intellectual property used to develop products such as the Black phone. Boeing has not disclosed information regarding the product to any other party without first securing the execution of a non-disclosure agreement.⁸ Boeing requests that the subject information not be made routinely available for public inspection at any time.⁹ The design and technology included in the product would benefit Boeing's competitors and harm Boeing if it is released for public inspection at any time.

Boeing's Black phone will be sold primarily to government agencies and companies engaged in contractual activities with those agencies that are related to defense and homeland security. The device will be marketed and sold in a manner such that low level technical and operational information about the product will not be provided to the general public. Detailed technical information distributed at trade shows will be limited or protected by non-disclosure agreements.

² See 47 C.F.R. § 0.459(b)(2).

³ See 47 C.F.R. § 0.459(b)(3).

⁴ See 47 C.F.R. § 0.459(b)(3).

⁵ See 47 C.F.R. § 0.459(b)(4).

⁶ See 47 C.F.R. § 0.459(b)(5).

⁷ See 47 C.F.R. § 0.459(b)(6).

⁸ See 47 C.F.R. § 0.459(b)(7).

⁹ See 47 C.F.R. § 0.459(b)(8).

Additional justifications for withholding the above listed materials from public inspection are as follows. First, with respect to the Block Diagram, Schematics, Internal Photos, and Parts List/Tune Up Information, pursuant to guidance issued by your office, such materials may be treated as confidential on a permanent basis if “the device is sealed and disassembly would destroy the product.”¹⁰ The Boeing Black phone is specifically designed so that any attempted unsealing or disassembly of the device would make the device inoperable and delete the data and software contained within the device. There are no serviceable parts on Boeing’s Black phone and any attempted servicing or replacing of parts would destroy the product. Permanent confidential treatment is further justified for these exhibits because any disclosure of the identified exhibits might facilitate efforts to defeat these hardware security measures, which would be counter to the underlying purpose of the product.

Finally, the public interest will be served by granting this request for confidential treatment. It is in the public interest that equipment manufacturers invest in the development of new technologies and be permitted to benefit from those efforts.¹¹ It is also in the public interest that the design and operational details of products that are specifically intended for use by governmental agencies and their contractors be protected from disclosure in order to ensure the continued reliability and security of such products.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce A. Olcott', written over a horizontal line.

Bruce A. Olcott
Counsel to The Boeing Company

¹⁰ *Confidentiality Procedures Detail*, FCC Office of Engineering and Technology, Laboratory Division, at 2 (Dec. 21, 2011).

¹¹ See 47 C.F.R. § 0.459(b)(9).