Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Wireless E911 Location Accuracy Requirements	)	PS Docket No. 07-114
	)	
The 911 Location Technologies Test Bed, LLC	)	
Request for Confidential Treatment	)	

ORDER

Adopted: June 25, 2020 **Released: June 25, 2020**

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. This Order grants the Request for Confidential Treatment for the Stage Za Report submitted by the 911 Location Technologies Test Bed, LLC (the Test Bed) to protect Google LLC's "proprietary and commercially sensitive information."[1] The Boulder Regional Emergency Telephone Service Authority (BRETSA) filed an opposition to the request[2] and the Test Bed and Google LLC (Google) filed a reply to BRETSA's Opposition.[3]

II. BACKGROUND

2. In connection with the *Wireless E911 Location Accuracy* proceeding, CTIA, on behalf of the Test Bed, submitted under cover a Stage Za Report to the Commission on April 29, 2020 describing results of the Test Bed and Google's efforts to test the precision of Google's handset-based solution to determining a wireless 911 caller's vertical location.[4] The Test Bed and Google provided a public summary version of the test results but requested confidential treatment of the report containing the detailed underlying test results.[5] The Test Bed states that the Stage Za Report "contains Google's proprietary and commercially sensitive information, including certain information about Google's

[1] *See* Letter from Thomas C. Power, Secretary, 911 Location Technologies Test Bed, LLC, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 07-114, Stage Za Test Bed Report – Request for Confidential Treatment (filed April 29, 2020) (Confidentiality Request) (arguing that the Stage Za Report comprises confidential and proprietary information about Google's Android Emergency Location Service that is protected by Exemption 4 of the Freedom of Information Act (FOIA) and is therefore exempt from disclosure under 47 CFR §§ 0.457(d)(2) and 0.459(b)).

[2] BRETSA Response in Opposition to Confidentiality Request CTIA Stage Za Test Bed Report, PS Docket No. 07-114 (filed May 12, 2020) (BRETSA Opposition) (seeking public disclosure of Stage Za test results based on several assertions, including the claim that Google does not customarily treat its Emergency Location Service location test results and accuracy as confidential).

[3] Reply of 911 Location Technologies Test Bed, LLC and Google LLC Opposing Release of Confidential Stage Za Test Bed Report, PS Docket 07-114 (filed May 26, 2020) (Test Bed and Google Reply).

[4] Letter from Thomas K. Sawanobori, Senior Vice President & Chief Technology Officer, CTIA, and Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, Marlene H. Dortch, Secretary, FCC, PS Docket No. 07-114 (filed April 29, 2020) at 1 (Cover Letter) ("The Report describes the independently administered test bed process and the current performance of the Stage Za solution under review, Google's Android-based Emergency Location Service (ELS)").

[5] *Id*. at 2-3 (summarizing Stage Za testing procedures and test results); Confidentiality Request at note 2 ("[H]ere, a status report such as Report Za that does not rise to certification should not be subject to a filing requirement.").

devices, Google's [Emergency Location Services, or ELS] technology, and details about ELS performance, that is not made publicly available and protected against disclosure to competitors in the normal course of business."[6] The Test Bed also claims the Stage Za Report is submitted voluntarily, because the Commission's *Fifth Report and Order* does not require its submission.[7] The Test Bed claims that Google has a commercial interest in the information contained in the Stage Za Report and that information is not routinely released to the public,[8] and that Google has taken steps to prevent unauthorized disclosure of the information and has not disclosed it previously.[9] The Test Bed also claims that the handset market is a competitive one and that Google would be harmed by the report's release.[10]

3. In its opposition to the Test Bed's Request, BRETSA argues that Google already makes information about its Emergency Location Service available via web page links to descriptions of Google's technology.[11] BRETSA further argues that the Cover Letter makes partial disclosures about the test results of the Stage Za Report which is "inconsistent with treating the test results as confidential."[12] BRETSA further claims that submission of the Report is required by Commission rules, not voluntary,[13] and that it is irrelevant whether the Stage Za Report was certified by the independent test bed (the condition for filing required by the *Fourth Report and Order*).[14] Furthermore, BRETSA asserts that the Commission's *Fifth Report and Order* never rescinded this requirement for public submission of subsequent test results.[15] Finally, BRETSA argues release of the Stage Za Report will not harm Google competitively.[16]

4. In their Reply, the Test Bed and Google counter that making certain information about a product publicly available does not deprive all details about that product from the protections of FOIA Exemption 4.[17] The Test Bed and Google argue that the Stage Za Report was conducted for the purpose of measuring performance, not for validating compliance with Commission's accuracy standard, so is not

[6] Confidentiality Request at 2.

[7] *Id.*; *see also Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fifth Report and Order and Fifth Further Notice of Proposed Rulemaking, 34 FCC Rcd 11592, 11598, 11601 at paras. 13, 17 (2019) (*Fifth Report and Order*).

[8] Confidentiality Request at 2.

[9] *Id.* at 3.

[10] *Id.*

[11] BRETSA Opposition at 3-4.

[12] *Id.* at 4.

[13] *Id*. at 8-9.

[14] *Id*. at 6; *see also Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Fourth Report and Order, 30 FCC Rcd 1259, 1308, para. 131 (2015) (*Fourth Report and Order*).

[15] BRETSA Opposition at 6, citing *Fifth Report and Order*, 34 FCC Rcd at 11598, 11601, paras. 13, 17.

[16] BRETSA Opposition at 7-8.

[17] Test Bed and Google Reply at 4-5.

required to be submitted under the Commission's rules, therefore the submission was voluntary.[18] The Test Bed and Google further argue that the Stage Za Report contains proprietary information and its release would substantially harm Google in a competitive market.[19] Finally, the Test Bed and Google claim that a failure to grant the Request for Confidentiality will harm the public interest by deterring further testing and reporting, which will slow the deployment of location-accurate E911 solutions.[20]

III. DISCUSSION

5. Under our rules, a request for confidentiality may be granted if the submitter has demonstrated by a preponderance of the evidence that withholding the information from the public is consistent with the Freedom of Information Act (FOIA).[21] Under FOIA Exemption 4, an agency may withhold from disclosure "commercial or financial information obtained from a person [that is] privileged or confidential."[22] The Supreme Court has clarified that information qualifies as "confidential" under Exemption 4 "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy."[23]

6. Here, that standard is met. As an initial matter, Google voluntarily tested its technology in the independent test bed, but the testing was not for purposes of validating the technology's compliance with the Commission's accuracy requirements. Because the Stage Za Report was submitted to the Commission voluntarily under our rules and not to the test bed for compliance with the validation requirement, it is not required to be submitted into the record under Section 9.10(i)(2)(ii)(B)[24] of the Commission's rules nor under the Commission's Orders in this proceeding.[25] The Commission's rules

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[18] *Id*. at 8-9 (explaining that Rule 9.10(i)(3)(i) "does not require filing with the Commission of all the results of all testing conducted by the Test Bed. Instead, Rule 9.10(i)(3)(i) calls for [Commercial Mobile Radio Service (CMRS)] providers to 'validate technologies intended for indoor location, including dispatchable location technologies and technologies that deliver horizontal and/or vertical coordinates, through an independently administered and transparent test bed process, in order for such technologies to be presumed to comply with the location accuracy requirements.' Stage Za testing did not result in the validation of ELS for use by mobile operators, and no CMRS carrier could rely on Report Za to claim regulatory compliance.... For Google, the Stage Za testing merely offered an opportunity to measure ELS against an external, independently derived set of tests defined by a neutral third party to benchmark Z-axis performance against the Commission's vertical location metric, with an eye to one day being able to support compliance. Report Za is thus informational only and not decisional.").

[19] *Id*. at 10-12.

[20] *Id*. at 12-13.

[21] *See* 47 CFR § 0.459(d)(2).

[22] 5 U.S.C. § 552(b)(4).

[23] *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2365-66 (2019).

[24] 47 CFR § 9.10(i)(2)(ii)(B) (requiring the nationwide CMRS providers to develop a z-axis accuracy metric "validated by an independently administered and transparent test bed process" and to submit the proposed metric by August 3, 2018, "supported by a report of the results of such development and testing, to the Commission for approval").

[25] In discussing the confidentiality of test results, in the *Fourth Report and Order*, the Commission noted that under the Communications Security, Reliability, and Interoperability Council's test bed regime, "all parties agreed that raw test results would be made available only to the vendors whose technology was to be tested, to the participating CMRS providers, and to the third-party testing house." *Fourth Report and Order*, 30 FCC Rcd at 1308, para. 131. In order to protect vendors' proprietary information, the Commission observed that "only summary data was made available to all other parties." *Id*. The Commission stated that it "will not require CMRS providers to make public the details of test results for technologies that have been certified by the independent test bed administrator. We believe the test administrators' certification is sufficient notification that a technology meets our key performance indicators." *Id*. Here, the Test Bed did not certify the test results, thus underscoring the voluntary nature of the Stage Za Report filing.

provide that if a person requests confidential treatment for materials that are submitted voluntarily, if that request is not granted, the materials will be returned if requested and not made public.[26] The Stage Za Report was submitted with such a request, and it therefore was submitted with an assurance of confidentiality. The Stage Za Report test results are indisputably commercial information and Google has established it does not routinely release such results to the public. BRETSA's citations to Google's advertisement of its product do not amount to Google putting its confidential technology into the public domain, nor does the fact that Google releases some technical information about its handsets[27] mean that it has waived its right to keep confidential more detailed technical information or information about products or features at an earlier stage of development. The Stage Za Report therefore will not be made routinely available for public inspection.[28]

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to section 0.459 of the Commission's rules, 47 CFR § 0.459, the Test Bed's Request for Confidential Treatment of Records IS GRANTED.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Fowlkes
Chief
Public Safety and Homeland Security Bureau

[26] 47 CFR § 0.459(e).

[27] *See* BRETSA Opposition at 3-4.

[28] *See* 47 CFR § 0.459(h). This order does not address whether the Commission would make public the otherwise confidential test results if, after balancing the factors favoring disclosure and non-disclosure, and taking into account all of the facts, it finds it would be in the public interest to do so. *See American Broadband & Telecommunications Company and Jeffrey S. Ansted*, Order on Reconsideration, 35 FCC Rcd 3762, 3764-65 (2020).