

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

In the Matter of)	
)	FOIA Control No. 2024-000407-A
Skywave Networks LLC)	FOIA Control No. 2024-000408-A
)	FOIA Control No. 2024-000623-A
On Requests for Inspection of Records)	

MEMORANDUM OPINION AND ORDER

Adopted: December 19, 2025**Released: December 23, 2025**

By the Commission:

I. INTRODUCTION

1. We have before us three Applications for Review (AFRs) by Skywave Networks LLC (Skywave)¹ seeking review of Freedom of Information Act (FOIA) decisions by the Commission's Office of Engineering and Technology (OET).² Skywave is seeking access to confidential commercial information that has been redacted from the publicly available experimental license applications filed by RCA Telecom LLC, M-Wave Networks LLC, Alpha Bravo Communications LLC, Skycast Services LLC, County Information Services LLC, Rockland Wireless LLC, and Toggle Communications LLC. For the reasons discussed below, we affirm OET's conclusion that the information redacted from these applications merits protection from disclosure under FOIA Exemption 4. We decline to provide Skywave with access to the redacted information.

II. BACKGROUND**A. FOIA Control No. 2023-000709**

2. FOIA Control No. 2023-000709 relates to the experimental license application granted to RCA Telecom LLC (RCA).³ While applications for experimental licenses are publicly available through

¹ Skywave Application for Review, FOIA Control No. 2024-000408-A (filed Nov. 29, 2023) (Skywave/RCA FOIA AFR); Skywave Application for Review, FOIA Control No. 2024-000407-A (filed Nov. 29, 2023) (Skywave/Five Applicants FOIA AFR); Skywave Application for Review, FOIA Control No. 2024-000623-A (filed June 20, 2024) (Skywave/Toggle FOIA AFR) (collectively, Skywave FOIA AFRs). We note that these applications for review have been assigned control numbers different from the control numbers assigned to the FOIA requests themselves.

² Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Timothy J. Elloe, Chief Executive Officer, Skywave (Aug. 31, 2023) (on file in FOIA Control No. 2023-000709) (Skywave/RCA FOIA Denial); Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Timothy J. Elloe, Chief Executive Officer, Skywave (Aug. 31, 2023) (on file in FOIA Control No. 2023-000714) (Skywave/Five Applicants FOIA Denial); Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Timothy J. Elloe, Chief Executive Officer, Skywave (Mar. 25, 2024) (on file in FOIA Control No. 2024-000123) (Skywave/Toggle 2024 FOIA Denial).

³ See RCA Telecom LLC, File No. 0746-EX-CN-2022, Call Sign WM2XTS. We note that Skywave's 2023 FOIA request, FOIA Control No. 2023-000709, also included a request for records relating to an application of Toggle Communications LLC (Toggle), File No. 0562-EX-CR-2021, Call Sign WI2XAJ. OET addressed Skywave's request for Toggle's records by separate letter. See Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Timothy J. Elloe, Chief Executive Office, Skywave Networks (Aug. 14, 2023) (on file in FOIA Control No. 2023-000709). We have no record of an application for review filed with respect to OET's action in connection with the 2023 request for Toggle's materials. Thus, with respect to FOIA Control No. 2023-000709, this *Memorandum Opinion and Order* relates only to Skywave's request for RCA's application materials. Skywave

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the Experimental Licensing System (ELS), the ELS also allows applicants to request that confidential information contained in their applications be withheld from public inspection under section 0.459 of our rules.⁴ RCA utilized this process to request that certain information contained in the application narrative and other exhibits (e.g., antenna patterns, antenna diagrams and orientation, experimental plans) be withheld from public inspection.⁵ RCA submitted a version of its application for an experimental license with confidential commercial information redacted, which was publicly available on the ELS.⁶

3. On July 25, 2023, Skywave filed a request under the FOIA seeking access to the unredacted version of RCA's application materials.⁷ As required by section 0.461(d)(3) of our rules,⁸ OET notified RCA of Skywave's request by letter dated August 3, 2023.⁹ OET also informed RCA, as provided in the rule, that it had ten calendar days to respond and/or object to the FOIA request.¹⁰

4. RCA timely objected to the release of the redacted information, arguing principally that the redacted information is proprietary technology and confidential business information that should be shielded from public disclosure under Exemption 4 of the FOIA.¹¹ RCA asserted that disclosure of this information could undermine the company's business plans and competitive position, causing the company serious commercial harm.¹² RCA confirmed that it customarily and actually treats the redacted information as confidential¹³ and that it submitted its license application under a reasonable expectation that the Commission would hold the redacted information as confidential.¹⁴

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made a separate request for Toggle materials in 2024 (FOIA Control No. 2024-000123) which we describe in more detail below.

⁴ See 47 CFR § 5.63(b). Indeed, the Commission has long accepted that experimental license applications may involve the submission of sensitive commercial information and has allowed applicants to request confidential treatment of such information. See, e.g., *Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations*, ET Docket No. 96-256, Report and Order, 13 FCC Rcd 21391, 21412 (1998); *Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations*, ET Docket No. 96-256, Notice of Proposed Rulemaking, 11 FCC Rcd 20130, 20150 (1996). See also *Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules*, ET Docket No. 10-236, Report and Order, 28 FCC Rcd 758, 791-92 (2013).

⁵ Letter from Laura Stefani, Venable LLP, Counsel for RCA Telecom LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1 (July 13, 2022) (on file in ELS File No. 0746-EX-CN-2022).

⁶ 47 CFR § 0.459(a)(1).

⁷ See Letter from Timothy J. Eloë, Chief Executive Officer, Skywave Networks LLC, to Stephanie Kost, FOIA Public Liaison, FCC Office of the Managing Director, re: Call Sign WM2XTS (July 25, 2023) (on file in FOIA Control No. 2023-000709) (RCA FOIA Request).

⁸ See 47 CFR § 0.461(d)(3).

⁹ See Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Laura Stefani, Venable LLP, Counsel for RCA Telecom LLC (Aug. 3, 2023) (on file in FOIA Control No. 2023-000709).

¹⁰ *Id.*

¹¹ Letter from Laura Stefani, Venable LLP, Counsel for RCA Telecom LLC, to David Duarte, Spectrum Allocations Analyst, Policy and Rules Division, FCC Office of Engineering and Technology (Aug. 14, 2023) (on file in FOIA Control No. 2023-000709) (RCA Opposition).

¹² *Id.*

¹³ *Id.* at 5-6.

¹⁴ *Id.*

5. Skywave filed its reply to RCA's objection on August 24, 2023.¹⁵ The Skywave Reply to RCA did not challenge in any meaningful way RCA's assertion that the redacted material included confidential commercial or financial information. Skywave asserted instead that RCA failed to identify the confidential commercial or financial information with sufficient particularity and that RCA's objections to disclosure were speculative or abstract.¹⁶

6. Skywave also argued that access to the portions of RCA's experimental license application redacted from public inspection is necessary to facilitate its ability to evaluate the pending Shortwave Modernization Coalition's (SMC) Petition for Rulemaking asking the Commission to authorize licensed use of frequencies above 2 MHz and below 25 MHz (the 2-25 MHz Band) for fixed, long-distance, non-voice communications.¹⁷ Skywave noted that RCA is an SMC member and provided information in support of the SMC Petition, including Appendix C, Declaration of Thomas Maxwell.¹⁸ Skywave asserted that it is entitled to access RCA's unredacted license application materials so that it can "review the SMC proposal with a full understanding of how the proposal developed."¹⁹ In Skywave's view, a primary concern in the petition for rulemaking proceeding is the potential for harmful interference from the proposed operations and, because the SMC Petition relies in part on RCA's experimental data, disclosure of the information redacted from RCA's license application can be expected to provide information regarding interference potential discovered during experimental operations.²⁰ Skywave argued further that disclosure would not cause RCA foreseeable commercial or financial harm, but would benefit RCA by disclosing to the public information supporting the SMC Petition.²¹

7. OET denied Skywave's RCA FOIA request by letter issued August 31, 2023.²² OET pointed out that RCA's application materials were available to Skywave through the ELS.²³ With respect to the material redacted from RCA's application, OET found no credible connection between the generalized proposal for spectrum reallocation reflected in the SMC Petition and Skywave's alleged need to review RCA's technical and business information contained in the experimental license application.²⁴ Indeed, the SMC Petition itself was supported by a 35-page engineering study that summarized multiple SMC member companies' use of spectrum in an experimental capacity that was readily available to the public, including Skywave.²⁵ In OET's view, the information already available to Skywave was sufficient to enable the company to participate effectively in the SMC Petition proceeding.²⁶

¹⁵ Skywave Reply to Opposition to Freedom of Information Act Request for Information, FOIA Control No. 2023-000706 (Aug. 24, 2023) (Skywave Reply to RCA).

¹⁶ *Id.* at 4-7.

¹⁷ *Id.* at 1 (citing Petition for Rulemaking of the Shortwave Modernization Coalition, RM-11953 (filed April 28, 2023) (SMC Petition)).

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.* at 2-3.

²¹ *Id.* at 7-8.

²² See Skywave/RCA FOIA Denial at 1.

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ *Id.* (citing SMC Petition Appx. A, Chris Helzer, Chief Engineer, Quadra Partners, LLC, Coexistence Report—Study on 2-25 MHz Band Coexistence (2023) (Coexistence Report)).

²⁶ *Id.*

8. OET went on to find that reasonably foreseeable harm could result from disclosure of the information redacted from RCA's application.²⁷ Specifically, OET found that disclosure of RCA's proprietary technology and confidential business information to Skywave could cause foreseeable harm to RCA's competitive position, particularly given that RCA and Skywave were members of the same industry.²⁸ OET noted finally that disclosure of RCA's information could restrict the Commission's ability to rely on such information in the future, even though submission of such information is required of applicants for experimental licenses.²⁹

9. Skywave filed its AFR, FOIA Control No. 2024-000408-A, on November 29, 2023.³⁰ RCA filed an Opposition to Application for Review on December 13, 2023.³¹

B. FOIA Control No. 2023-000714

10. FOIA Control No. 2023-000714 relates to experimental license applications granted to M-Wave Networks LLC (M-Wave), Alpha Bravo Communications LLC (ABC), Skycast Services LLC (Skycast), County Information Services LLC (CIS), and Rockland Wireless LLC (Rockland) (collectively the Five Applicants).³² As with RCA, the license applications are available to the public through the ELS. The Five Applicants each filed a request that confidential commercial information contained in its application for experimental license be withheld from public inspection under section 0.459 of our rules.³³ Each of the Five Applicants, therefore, submitted a version of its application with the confidential commercial information redacted, which was posted on the ELS.

11. On July 26, 2023, Skywave filed requests under the FOIA seeking access to the unredacted version of the application files for each of the Five Applicants.³⁴ These FOIA requests were

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Skywave/RCA FOIA AFR.

³¹ RCA Telecom LLC Opposition to Application for Review, FOIA Control No. 2023-000408-A (filed Dec. 13, 2023) (RCA Opposition to AFR).

³² See M-Wave Networks LLC, File No. 0676-EX-CN-2020, Call Sign WL2XEE; Alpha Bravo Communications LLC, File No. 0675-EX-CN-2022, Call Sign WM2XZU; Skycast Services LLC, File No. 0725-EX-CR-2022, Call Sign WI2XER; County Information Services LLC, File No. 1238-EX-CN-2022, Call Sign WN2XCR; Rockland Wireless, LLC, File No. 0472-EX-CR-2021, Call Sign WK2XJK.

³³ See 47 CFR § 5.63(b). See also M-Wave, FCC Form 442, Exhibit 5, Request for Confidential Treatment (on file in FCC File No. 0676-EX-CN-2020) (requesting confidential treatment for Exhibits 1-4 of its application); Letter from Tony Lin, DLA Piper LLP, Counsel to Alpha Bravo Communications LLC, to Experimental Licensing Branch, FCC Office of Engineering and Technology (July 1, 2022) (on file in FCC File No. 0675-EX-CN-2022) (requesting confidential treatment of the Narrative Statement, and the Antenna Specifications as disclosed in an appendix to the Narrative Statement, of its application); Skycast, Form 442—Request for Confidential Treatment (on file in FCC File No. 0725-EX-CR-2022) (requesting confidential treatment for the exhibit, "Confidential Description of Continuing Experimental North America-to-Europe Wideband HF Program – License Renewal," of its application); Letter from Richard Reeuwijk, Director, County Information Services, LLC, to Experimental Licensing Branch, FCC Office of Engineering and Technology (Nov. 4, 2022) (on file in FCC File No. 1238-EX-CN-2022) (requesting confidential treatment for the Narrative Statement of its application); Letter from Robert Irvine, Secretary, Rockland Wireless LLC, to Experimental Licensing Branch, FCC Office of Engineering and Technology (Aug. 27, 2021) (on file in FCC File No. 0472-EX-CR-2021) (requesting confidential treatment for information provided in its renewal application and to extend the confidential treatment requested for the Technical Narrative Exhibit, Antenna Radiation Pattern Exhibit, and Tower/Antenna Configuration Exhibit contained in its application for the underlying license, File No. 0566-EX-CN-2019).

³⁴ See Letter from Timothy Eloë, Chief Executive Officer, Skywave Networks LLC, to Stephanie Kost, FOIA Public Liaison, Office of the Managing Director, re: Call Sign WK2XZU (July 26, 2023); Letter from Timothy Eloë, Chief

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assigned FOIA Control No. 2023-000714, and followed a procedural path and raised issues that are substantially the same as those discussed above in connection with Skywave's RCA FOIA Request.

12. As required by section 0.461(d)(3) of our rules, OET notified the Five Applicants of Skywave's FOIA request by letters dated August 3, 2023.³⁵ OET also informed the Five Applicants, as provided in the rule, that they had ten calendar days to respond and/or object to the FOIA request.

13. The Five Applicants timely filed objections with M-Wave, ABC, and Rockland joining in a single objection filed on their behalf by their parent company, Tower Research Capital LLC (TRC), and Skycast and CIS filing separate oppositions.³⁶ Each of the Five Applicants objected to disclosure of its confidential commercial information to Skywave for reasons that were substantially identical to one another and to the reasons identified by RCA discussed above. The Five Applicants demonstrated that the information redacted from their experimental license applications is commercial or financial information shielded from public disclosure under Exemption 4 of the FOIA.³⁷ They also stated that disclosure of the redacted information could cause each company serious commercial harm.³⁸ They confirmed that each company customarily and actually treats the redacted information as confidential and that the information was submitted under a reasonable assurance that the Commission would treat the information as confidential.³⁹

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Executive Officer, Skywave Networks LLC, to Stephanie Kost, FOIA Public Liaison, Office of the Managing Director, re: Call Sign WL2XEE (July 26, 2023); Letter from Timothy Eloie, Chief Executive Officer, Skywave Networks LLC, to Stephanie Kost, FOIA Public Liaison, Office of the Managing Director, re: Call Sign WK2XJK (July 26, 2023); Letter from Timothy Eloie, Chief Executive Officer, Skywave Networks LLC, to Stephanie Kost, FOIA Public Liaison, Office of the Managing Director, re: Call Sign WN2XCR (July 26, 2023); Letter from Timothy Eloie, Chief Executive Officer, Skywave Networks LLC, to Stephanie Kost, FOIA Public Liaison, Office of the Managing Director, re: Call Sign WI2XER (July 26, 2023) (collectively on file in FOIA Control No. 2023-000714) (collectively, "Five Applicants FOIA").

³⁵ See Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Brian Higgins (Aug. 3, 2023); Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Tony Lin, DLA Piper LLP, Counsel for Alpha Bravo Communications LLC (Aug. 3, 2023); Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Nathan Wright (Aug. 3, 2023); Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Richard Reeuwijk (Aug. 3, 2023) (collectively on file in FOIA Control No. 2023-000714). Due to a typographical error in Skywave's FOIA request regarding Rockland's file number, OET did not provide Rockland with notice of Skywave's FOIA request for its experimental license application materials. Since Rockland, M-Wave and ABC are subsidiaries of Tower Research Capital LLC, OET's notices to M-Wave and ABC effectively placed Rockland on notice of the FOIA request and Rockland joined M-Wave and ABC in their objection to the Skywave FOIA request. See Letter from Tony Lin, DLA Piper LLP, Counsel for Tower Research Capital LLC (TRC), to David Duarte, Spectrum Allocations Analyst, Policy and Rules Division, FCC Office of Engineering and Technology (Aug. 14, 2023) (on file in FOIA Control No. 2023-000714) (TRC Opposition).

³⁶ See TRC Opposition; Letter from Eric Bellerive, Skycast Services LLC, to David Duarte, Spectrum Allocations Analyst, Policy and Rules Division, FCC Office of Engineering and Technology (Aug. 14, 2023) (Skycast Opposition); Letter from Richard Reeuwijk, Director, County Information Services, LLC, to David Duarte, Spectrum Allocations Analyst, Policy and Rules Division, FCC Office of Engineering and Technology (Aug. 14, 2023) (CIS Opposition) (collectively on file in FOIA Control No. 2023-000714).

³⁷ See Skycast Opposition at 2; CIS Opposition at 2; TRC Opposition at 1.

³⁸ See Skycast Opposition at 4-6; CIS Opposition at 4; TRC Opposition at 2.

³⁹ See Skycast Opposition at 4; *see also* CIS Opposition at 3. While the TRC opposition did not address this element expressly, it emphasized that TRC's three subsidiaries filed their applications with requests for confidential treatment and continued to oppose releasing their information to Skywave. See TRC Opposition at 1, n.3.

14. Skywave replied to the Skycast Opposition, CIS Opposition, and TRC Opposition.⁴⁰ The Skywave Replies are functionally identical one to another, and we will discuss them collectively. As in Skywave's Reply to RCA discussed above, Skywave did not challenge in any meaningful way the commercial nature of the information redacted from the license applications, arguing instead that the Five Applicants failed to identify the confidential commercial or financial information with sufficient particularity and that the Five Applicants' objections to disclosure were speculative or abstract.⁴¹

15. Again, Skywave's primary argument was that access to the redacted information was necessary to facilitate its ability to evaluate the SMC Petition.⁴² Skywave emphasized that each of the Five Applicants is an SMC member and appears to have provided information in support of the SMC Petition. Skywave stated that access to the information redacted from the Five Applicants' license applications is necessary in order that it may review the SMC Petition with a full understanding of how the proposal developed. Skywave argued further that disclosure of the redacted information would not cause reasonably foreseeable commercial or financial harm to the Five Applicants, but would benefit them by disclosing to the public information supporting the SMC Petition.⁴³

16. OET denied Skywave's Five Applicants FOIA request by letter issued August 31, 2023.⁴⁴ As in the RCA matter, OET pointed out that applications were available to Skywave through the ELS.⁴⁵ With respect to the confidential commercial information redacted from the applications, OET found that the information already available to Skywave was sufficient to enable the company to participate in the SMC Petition proceeding and there was no need for Skywave to review the technical and business information redacted from the experimental license applications.⁴⁶ OET also found that disclosure of the redacted information could cause foreseeable harm to the Five Applicants' competitive positions, particularly given that they were all members of the same industry as Skywave.⁴⁷ OET noted, finally, that disclosure of the redacted information could restrict the Commission's ability to rely on such information in the future, even though submission of such information is required of applicants for experimental licenses.⁴⁸

17. Skywave filed its AFR, FOIA Control No. 2024-000407-A, on November 29, 2023.⁴⁹ TRC filed an Opposition to Application for Review on behalf of ABC, M-Wave, and Rockland on December 13, 2023.⁵⁰ CIS filed, and served on Skywave, an *ex parte* presentation opposing the Skywave/Five Applicants FOIA AFR on January 17, 2024.⁵¹

⁴⁰ Skywave Reply to Opposition of Skycast Services LLC to Freedom of Information Act Request for Information (Aug. 25, 2023) (one day filing extension granted for good cause shown); Skywave Reply to Opposition of County Information Services, LLC to Freedom of Information Act Request for Information (Aug. 24, 2023); Skywave Reply to Opposition of Tower Research Capital LLC to Freedom of Information Act Request for Information (Aug. 24, 2023) (collectively on file in FOIA Control No. 2023-000714) (collectively, the "Skywave Replies").

⁴¹ See Skywave Replies at 4-6.

⁴² See *id.* at 1-5.

⁴³ See *id.* at 7-9.

⁴⁴ See Skywave/Five Applicants FOIA Denial.

⁴⁵ *Id.* at 1.

⁴⁶ *Id.* at 2.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Skywave/Five Applicants FOIA AFR.

⁵⁰ Opposition to Application for Review, FOIA Control No. 2024-000407-A (filed Dec. 13, 2023) (TRC Opposition to AFR).

C. FOIA Control No. 2024-000123

18. FOIA Control No. 2024-000123 relates to the application for license modification to extend the experimental license originally granted to Toggle Communications LLC (Toggle) on November 6, 2015.⁵² Toggle's application is available to the public through the ELS. Toggle also posted to the ELS a version of the narrative portion of its application with certain confidential commercial information redacted for public inspection. Toggle, however, omitted filing a formal request that the confidential commercial information contained in its modification application be withheld from public inspection under section 0.459 of our rules.⁵³

19. On December 5, 2023, Skywave filed a request under the FOIA seeking access to the confidential commercial information redacted from the narrative portion of Toggle's modification application.⁵⁴ Skywave asserted that it needs access to Toggle's confidential information "to inform Skywave's participation in the proceeding arising from the Shortwave Modernization Coalition's ('SMC') Petition for Rulemaking, based, in part, on the information redacted in Toggle's application."⁵⁵ Pursuant to section 0.461(d)(3) of our rules, OET notified Toggle of Skywave's request by letter dated December 27, 2023.⁵⁶ OET also informed Toggle, as provided in the rule, that it had ten calendar days to respond and/or object to the FOIA request.⁵⁷

20. Toggle timely objected to the release of its redacted information, arguing principally that this information is proprietary technology and confidential business information that should be shielded from public disclosure under Exemption 4 of the FOIA.⁵⁸ Toggle asserted that the redacted information is "largely the same material for which Toggle already requested confidential treatment in its original license application," which "concerns the specifics of Toggle's technical hypothesis; details regarding the test process and inputs; and details on the type of information that Toggle expected to obtain from the testing and assessments."⁵⁹ According to Toggle, release of the redacted information would cause Toggle

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⁵¹ *Ex Parte* Presentation of County Information Services, LLC, FOIA Control No. 2024-000407-A (filed Jan. 17, 2024) (CIS Opposition to AFR). We note that we do not have record of Skycast filing any opposition to Skywave's AFR.

⁵² See Toggle Communications LLC, File Nos. 0320-EX-CM-2023 and 0642-EX-PL-2015, Call Sign WI2XAJ.

⁵³ See 47 CFR § 5.63(b).

⁵⁴ Letter from Timothy J. Elloe, Chief Executive Officer, Skywave, to Stephanie Kost, FOIA Public Liaison, FCC Office of the Managing Director (Dec. 5, 2023) (on file in FOIA Control No. 2024-000123) (Skywave/Toggle FOIA Request). We note that Skywave also submitted a request under the FOIA for a copy of the "complete application file, including correspondence and test results [and] including the information redacted under Section 0.459 of the Commission's rules," for Toggle's experimental licenses granted under Call Signs WI2XAJ, and WL2XYM. See Letter from Timothy J. Elloe, Chief Executive Officer, Skywave, to Stephanie Kost, FOIA Public Liaison, FCC Office of the Managing Director (Aug. 30, 2023) (on file in FOIA Control No. 2023-000791). OET addressed Skywave's request for these records by separate letter. See Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Timothy J. Elloe, Chief Executive Officer, Skywave Networks (Dec. 5, 2023) (on file in FOIA Control No. 2023-000791) (Skywave/Toggle 2023 FOIA Denial). We have no record of an application for review filed with respect to OET's action in connection with this request for Toggle's materials.

⁵⁵ Skywave/Toggle FOIA Request at 2 (referring to RM-11953).

⁵⁶ See Letter from Ronald T. Repasi, Chief, FCC Office of Engineering and Technology, to Laura Stefani, Venable LLP, Counsel for Toggle Communications LLC (Dec. 27, 2023) (on file in FOIA Control No. 2024-000123).

⁵⁷ *Id.*

⁵⁸ Letter from Laura Stefani, Venable LLP, Counsel for Toggle Communications LLC, to David Duarte, Spectrum Allocations Analyst, Policy and Rules Division, FCC Office of Engineering and Technology (Jan. 8, 2024) (on file in FOIA Control No. 2024-000123) (Toggle Opposition).

⁵⁹ *Id.* at 2.

foreseeable commercial or financial harm.⁶⁰

21. Skywave filed its reply to Toggle's Opposition on January 17, 2024.⁶¹ The Skywave Reply to Toggle did not challenge Toggle's assertions that the redacted information is sensitive commercial information, the release of which would cause Toggle foreseeable commercial or financial harm. Skywave instead relied exclusively on the argument that "[w]ithout a specific request for confidential treatment tendered with the information to be protected, the Commission should not withhold the information requested under FOIA."⁶²

22. OET denied Skywave's Toggle FOIA request by letter dated March 25, 2024.⁶³ OET confirmed that the information redacted from Toggle's application is confidential commercial information protected under Exemption 4 of the FOIA, the disclosure of which "would cause foreseeable harm to Toggle's competitive position 'in that it would lessen the value of [its] technologically innovative product by enabling others to utilize the information to develop similar products.'"⁶⁴ OET found further that the absence of a request for confidential treatment in File No. 0320-EX-CM-2023 was immaterial because the redacted information was materially the same information Toggle had redacted from a previous application and for which the company had filed a request for confidential treatment.⁶⁵ OET also noted that the Commission had discretion to withhold information from public inspection in absence of a request for confidential treatment under section 0.457(d)(2) of our rules.⁶⁶ Finally, OET concluded that the information publicly available to Skywave was sufficient to allow the company to pursue its interests in the SMC petition and providing Skywave with access to Toggle's confidential commercial information was unnecessary.⁶⁷

23. Skywave filed its AFR, FOIA Control No. 2024-000623-A, on June 20, 2024.⁶⁸ Toggle filed an Opposition to Application for Review on July 3, 2024.⁶⁹

III. DISCUSSION

24. At the outset, we dispose of procedural challenges to the Skywave/RCA FOIA AFR and Skywave/Five Applicants FOIA AFR. RCA and TRC assert that the Skywave/RCA FOIA AFR and Skywave/Five Applicants FOIA AFR are fatally defective under section 1.115(b)(2) of our rules because they fail to concisely and plainly state the questions presented for review and fail to specify the factors which warrant Commission consideration.⁷⁰ We disagree. While the Skywave/RCA FOIA AFR and

⁶⁰ *Id.* at 3.

⁶¹ Skywave Reply to Opposition of Toggle Communications LLC to Freedom of Information Act Request for Information, FOIA Control No. 2024-000123 (Jan. 17, 2024) (Skywave Reply to Toggle).

⁶² *Id.* at 3.

⁶³ See Skywave/Toggle 2024 FOIA Denial.

⁶⁴ *Id.* at 3 (quoting *Jeffrey A. Krauss on Request for Inspection*, FOIA Control No. 96-80, Memorandum Opinion and Order, 11 FCC Rcd 10819, 10820, para. 4 (1996)).

⁶⁵ *Id.*

⁶⁶ *Id.* at 3; see 47 CFR § 0.457(d)(2) ("In the absence of a request for non-disclosure, the Commission may, in the unusual instance, determine on its own motion that the materials should not be routinely available for public inspection.").

⁶⁷ Skywave/Toggle 2024 FOIA Denial at 3.

⁶⁸ See Skywave/Toggle FOIA AFR.

⁶⁹ Opposition of Toggle Communications LLC to Skywave Application for Review, FOIA Control No. 2024-000123 (filed July 3, 2024) (Toggle Opposition to AFR).

⁷⁰ 47 CFR § 1.115(b)(2). See RCA Opposition to AFR at 3; TRC Opposition to AFR at 2.

Skywave/Five Applicants FOIA AFR are far from models of clarity, we find that Skywave has adequately identified the OET actions that it considers to be in error, and the basis for its contention that these actions contravene the Commission's obligations under the FOIA and the FOIA Improvement Act of 2016 (FIA). Thus, we decline to dismiss the Skywave/RCA FOIA AFR and Skywave/Five Applicants FOIA AFR under section 1.115(b)(2) and address them on their merits herein.

A. Skywave AFRs (FOIA Control Nos. 2024-000408 and 2024-000407)

25. With respect to the substantive challenges in the Skywave/RCA FOIA AFR and Skywave/Five Applicants FOIA AFR, we understand Skywave to be raising two issues for our review:

1. Whether OET erred by failing to demonstrate that the information redacted from the experimental license applications was either trade secrets or confidential commercial or financial information that may be shielded from disclosure under Exemption 4 of the FOIA.
2. Whether OET failed to show that disclosure of the redacted information would cause foreseeable harm as required under the FIA.

26. As discussed below, we find that the information redacted from the experimental license applications is plainly confidential information in which RCA and the Five Applicants have a commercial interest and is eligible to be withheld from disclosure under Exemption 4 of the FOIA. We find further that OET properly applied the foreseeable harm standard established in the FIA in denying the Skywave FOIA requests.

1. The Redacted Information Is Confidential Commercial Information Under Exemption 4 of the FOIA.

27. Exemption 4 of the FOIA permits agencies to withhold "trade secrets and commercial or financial information" that is "obtained from a person and [is] privileged or confidential."⁷¹ Skywave does not dispute that the information redacted from the RCA and Five Applicants applications is "confidential" and was "obtained from a person." Skywave argues instead that OET characterized the redacted information as "individualized proprietary technology and confidential business information" and not "trade secrets" or "commercial or financial information."⁷² And "[f]or that reason alone," Skywave believes the information does not qualify for Exemption 4.⁷³ We have reviewed the record including the information redacted from the experimental license applications and find Skywave's argument unpersuasive.

28. OET did not find the redacted information to be "trade secrets,"⁷⁴ but it did demonstrate sufficiently that the information is "commercial information" within the meaning of Exemption 4.⁷⁵ OET noted that the records in question contained proprietary technology and confidential business information and cited to the oppositions filed by RCA and the Five Applicants, which provided additional detail regarding the commercial nature of the information redacted from their applications.⁷⁶ Further, OET expressly cited the relevant language from the FOIA and referred to portions of the Department of Justice, Office of Information Policy's FOIA guidance document addressing commercial information under

⁷¹ 5 U.S.C. § 552(b)(4).

⁷² Skywave/RCA FOIA AFR at 1, 5; Skywave/Five Applicants FOIA AFR at 2, 6.

⁷³ Skywave/RCA FOIA AFR at 5; Skywave/Five Applicants FOIA AFR at 6.

⁷⁴ Skywave/RCA FOIA AFR at 2; Skywave/Five Applicants FOIA AFR at 3.

⁷⁵ Skywave/RCA FOIA Denial at 2; Skywave/Five Applicants FOIA Denial at 3.

⁷⁶ Skywave/RCA FOIA Denial at 1-2; Skywave/Five Applicants FOIA Denial at 2-3.

Exemption 4.⁷⁷ There could be no doubt that OET viewed the information in question to be commercial information.

29. Our own review of the record confirms OET's judgment. The terms "commercial or financial information" as used in the FOIA are to be given their ordinary meaning.⁷⁸ As such, "the question of whether information is 'commercial' boils down to a common sense inquiry into whether the proponent has a business interest in that information."⁷⁹ "Exemption 4 extends beyond 'revenue, net worth, income, and [Earnings Before Interest, Taxes, Depreciation, and Amortization]' to broadly cover when the provider of the information has a commercial interest in the information submitted to the agency."⁸⁰

30. The information redacted from the experimental license applications clearly satisfies this standard. As described by RCA, the information sought by Skywave includes specific details of RCA's technical hypothesis, the company's test process and inputs, details on the type of information the company expected to obtain from the testing and assessment, and information about the antenna orientation.⁸¹ The information redacted from Skycast's application includes design parameters and uses of the wideband high frequency technology that is still under development, Skycast's business plans for the program of development, and results and analysis of Skycast's findings based on the experimental program.⁸² Similarly, the redacted information in the CIS application includes detailed technical parameters to be used in CIS's continuing experiments and experimental design, and antenna specifications belonging to CIS or its technical consultants.⁸³ Finally, the information redacted by the three TRC applicants includes discussions of testing parameters and processes, including technical parameters and operational techniques and strategies.⁸⁴ RCA and the Five Applicants clearly have a commercial interest in their own test plans for proprietary, non-public technologies and in their business plans, which they intend to put to commercial use.

31. Nothing in the Skywave FOIA AFRs materially undermines this conclusion. Skywave cites to *Citizens for Responsibility v. U.S. Dept. of Justice* for the proposition that, for purposes of FOIA Exemption 4, commercial information must "'serve a commercial function' or be of a 'commercial nature.'"⁸⁵ As Skywave states, this decision applies the long-standing *Public Citizen* standard, finding that Exemption 4 "applies (among other situations) when the provider of the information has a commercial interest in the information submitted to the agency."⁸⁶ The case, however, actually supports OET's action here. RCA and the Five Applicants plainly have a commercial interest in the information

⁷⁷ Skywave/RCA FOIA Denial at 2; Skywave/Five Applicants FOIA Denial at 3.

⁷⁸ *Public Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983) (*Public Citizen*).

⁷⁹ *Occupational Safety & Health Law Project, PLLC v. U.S. Dept. of Labor*, Case No. 1:21-cv-2028-RCL, 2022 U.S. Dist. LEXIS 147445, at *9-*10 (D.D.C. Aug. 17, 2022) (quoting *Kahn v. Fed. Motor Carrier Safety Admin.*, 648 F. Supp. 2d 31, 36 (D.D.C. 2009) (citing *Public Citizen*, 704 F.2d at 1290)).

⁸⁰ *Id.* (citing *Baker & Hostetler LLP v. Dept. of Commerce*, 473 F.3d 312, 319 (D.C. Cir. 2006) (*Baker & Hostetler*) and *Judicial Watch, Inc. v. Dept. of Health and Human Services*, 525 F. Supp. 3d 90, 96 (D.D.C. 2021)).

⁸¹ See RCA Opposition at 2.

⁸² See Skycast Opposition at 2.

⁸³ See CIS Opposition at 2.

⁸⁴ See TRC Opposition at 1.

⁸⁵ Skywave/RCA FOIA AFR at 3 (quoting *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Justice*, 58 F.4th 1255, 1263 (D.C. Cir. 2023) (*Citizens for Responsibility*)); Skywave/Five Applicants FOIA AFR at 4 (same).

⁸⁶ *Citizens for Responsibility*, 58 F.4th at 1263 (quoting *Baker & Hostetler*, 473 F.3d at 319).

they redacted from their experimental license applications and that information is thus commercial information as recognized by *Citizens for Responsibility*.

32. The remainder of the cases cited by Skywave likewise do not serve its argument.⁸⁷ Skywave relies on these cases for the unsurprising proposition that, while the reach of FOIA Exemption 4 is broad, “not every bit of information submitted to the government by a commercial entity qualifies for protection under Exemption 4.”⁸⁸ But, OET did not withhold “every bit of information” submitted by RCA and the Five Applicants. RCA and the Five Applicants redacted only limited information from their experimental license applications and OET withheld only those specific pieces of information that the submitters identified in their requests for confidentiality as confidential commercial information. We find the information redacted from experimental license applications to be confidential commercial information eligible for protection under Exemption 4 of the FOIA.

2. Disclosure of the Redacted Information Would Cause Foreseeable Harm Within the Meaning of the FIA.

33. Skywave’s second argument appears to be that the Skywave/RCA FOIA Denial and the Skywave/Five Applicants FOIA Denial are in conflict with the FIA.⁸⁹ This argument also fails.

34. The FIA, among other things, codified the “foreseeable harm” standard articulated in the U.S. Department of Justice’s 2009 FOIA Guidelines.⁹⁰ Under this standard, an agency may withhold information only when (1) it reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is otherwise prohibited by law.⁹¹ The Court of Appeals for the District of Columbia Circuit has explained that, to meet this burden, an agency must “articulate both the nature of the harm [from release] and the link between the specified harm and specific information contained in the material withheld.”⁹²

35. While the Supreme Court has acknowledged the “important interests served by the exemptions,”⁹³ federal courts have taken differing approaches in applying the foreseeable harm standard to Exemption 4.⁹⁴ The district court for the Northern District of California has held that the protected interest is “the information’s confidentiality--that is, its private nature.”⁹⁵ The district court for the District of Columbia has held that the interests protected by Exemption 4 are “the submitter’s economic or business interests,” and the Court of Appeals for the Second Circuit has also adopted this approach.⁹⁶

⁸⁷ See Skywave/RCA FOIA AFR at 2-4; Skywave/Five Applicants FOIA AFR at 3-5.

⁸⁸ *Public Citizen*, 704 F.2d at 1290.

⁸⁹ See Skywave/RCA FOIA AFR at 2; Skywave/Five Applicants FOIA AFR at 3.

⁹⁰ See Office of Information Policy, U.S. Department of Justice, *OIP Guidance: Applying a Presumption of Openness and the Foreseeable Harm Standard* (Apr. 12, 2023), <https://www.justice.gov/oip/oip-guidance-applying-presumption-openness-and-foreseeable-harm-standard>.

⁹¹ 5 U.S.C. § 552(a)(8)(A)(i).

⁹² *Reporters Comm. for Freedom of the Press v. Fed. Bureau of Investigation*, 3 F.4th 350, 369 (D.C. Cir. 2021).

⁹³ *Fed. Bureau of Investigation v. Abramson*, 456 U.S. 615, 630-31 (1982). See also *Food Marketing Inst. v. Argus Leader Media*, 588 U.S. 427, 439 (2019).

⁹⁴ See generally U.S. Department of Justice, Department of Justice Guide to the Freedom of Information Act, Exemption 4, at 18, <https://www.justice.gov/oip/page/file/1456996/dl?inline> (last visited Dec. 1, 2025).

⁹⁵ *American Small Business League v. U.S. Dept. of Defense*, 411 F. Supp. 3d 824, 836 (N.D. Cal. 2019) (emphasis omitted).

⁹⁶ *Center for Investigative Reporting v. U.S. Customs and Border Protection*, 436 F. Supp. 3d 90, 113 (D.D.C. 2019) (cleaned up); see also *Seife v. U.S. Food & Drug Admin.*, 43 F.4th 231, 240 (2d Cir. 2022) (“We hold that the interests protected by Exemption 4 of FOIA are the commercial or financial interests of the submitter in information

(continued....)

We need not resolve this judicial difference here. We find that the information redacted from the RCA and the Five Applicants applications satisfies the foreseeable harm standard of the FIA under either formulation.

36. First, it is unquestioned that release of the redacted information would undermine the private nature of that information. RCA and the Five Applicants each assert that they customarily and actually treat the redacted information as confidential and Skywave does not dispute these claims.

37. Second, disclosure of the redacted information would cause foreseeable harm to the submitters' economic or business interests. OET concluded that disclosure of the experimental licensees' "proprietary technology and confidential business information would cause foreseeable harm to the [] experimental licensees' competitive position 'in that it would lessen the value of their technologically innovative product by enabling others to utilize the information to develop similar products.'"⁹⁷ For the reasons discussed below, we confirm OET's conclusion.

38. Our review of the record finds that RCA and the Five Applicants raised well-founded concerns that disclosure of the redacted information could cause foreseeable harm to their economic and business interests. Skycast, for instance, asserts that competitors could benefit from the time and resources that Skycast has invested in developing a program of research and testing of proprietary wideband HF technologies, allowing them to short-cut the process of developing a competitive response.⁹⁸ CIS argues that disclosure of the information in question could give competitors an unfair advantage by allowing them to use information, inventions, and processes developed by CIS as a basis for additional experimentation and potential commercial exploitation.⁹⁹ TRC similarly argues that disclosure of the information in question would jeopardize its subsidiaries' long-term business plans and allow other parties to unfairly appropriate the company's innovative technology to develop competing wireless technologies and systems or otherwise harm the company.¹⁰⁰ Finally, RCA asserts that disclosure of this information might allow a competitor to use this information to obtain patents that RCA may need to rely upon to achieve its business goals, thereby blocking RCA from using aspects of its technology unless it obtains the rights to patents acquired by its competitors.¹⁰¹

39. The potential for foreseeable harm to RCA and the Five Applicants is particularly evident given that these entities are in the same industry as Skywave.¹⁰² Furthermore, Skywave's stated rationale for requiring access to the redacted information, *i.e.*, that it needs access to the redacted information "to facilitate its evaluation of the" SMC Petition proposing a new allocation for shortwave operations, is unconvincing.¹⁰³ The SMC Petition was accompanied by the Coexistence Report, a 35-page technical analysis that analyzed the potential for fixed, long-distance transmitters in the 2-25 MHz Band to transmit

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that is of a type held in confidence and not disclosed to any member of the public by the person to whom it belongs.").

⁹⁷ Skywave/Five Applicants FOIA Denial at 3 (citation omitted); *see also* Skywave/RCA FOIA Denial at 2 ("Disclosure of RCA's proprietary technology and confidential business information would cause foreseeable harm to RCA's competitive position 'in that it would lessen the value of their technologically innovative product by enabling others to utilize the information to develop similar products.'" (citation omitted)).

⁹⁸ *See* Skycast Opposition at 4-6.

⁹⁹ *See* CIS Opposition at 4.

¹⁰⁰ *See* TRC Opposition at 2.

¹⁰¹ *See* RCA Opposition at 5-6.

¹⁰² Skywave/RCA FOIA Denial at 2; Skywave/Five Applicants FOIA Denial at 3-4. We note that Skywave does not restate this rationale in its FOIA AFRs.

¹⁰³ Skywave Reply to RCA at 1; Skywave Replies at 1.

data and provide other services.¹⁰⁴ The technical analysis provides a full description of the proposed services, including details such as the: 1) frequency of operation, 2) transmitter power, bandwidth and emissions, and 3) gain, directivity, and representative antennas patterns.¹⁰⁵ In short, the Coexistence Report provides Skywave the information necessary for the company to evaluate and comment meaningfully on SMC's proposal. Consequently, we cannot credit Skywave's claim that it also needs to access the proprietary and confidential information of RCA and the Five Applicants in order to participate meaningfully in the SMC Petition proceeding.

40. Finally, the Skywave FOIA AFRs do not materially undermine OET's analysis on this point. Skywave sidesteps the issue almost entirely and focuses instead on OET's expressed concern that disclosure of the redacted information might chill future applicants' willingness to provide confidential commercial information to OET in the future.¹⁰⁶ We find Skywave's arguments to be unpersuasive. The potential chilling effect of disclosure in this case is a very real concern but we do not rely on it here as the basis for the foreseeable competitive harm to RCA and the Five Applicants stemming from disclosure.

41. For the foregoing reasons, we disagree with Skywave's assertion that OET's action contradicts the requirements of the FIA. We find that disclosure of the redacted information would cause foreseeable harm to the submitters and, thus, we may withhold that information under the FIA.

B. Skywave AFR (FOIA Control No. 2024-000623)

42. With respect to the Skywave/Toggle FOIA AFR, we understand Skywave to be raising the following issue for our review:

1. Whether OET acted in accordance with section 0.457(d)(2) of our rules in denying Skywave's request under the FOIA to obtain Toggle's redacted confidential commercial information.

We find that the Skywave/Toggle 2024 FOIA Denial comports with section 0.457(d)(2) and affirm OET's conclusion that the records sought by Skywave merit protection from disclosure under Exemption 4 of the FOIA.

43. Skywave's sole argument is that, because Toggle did not file a formal request for confidential treatment in connection with its experimental license modification application, OET was obligated by Commission rule and the FOIA's overarching policy favoring openness and transparency to produce the information redacted from the application.¹⁰⁷ Whether Toggle filed a formal request for confidential treatment together with the experimental license modification application, however, is not dispositive. As Toggle represents, the information redacted from the modification application is "largely the same material" as that contained in the underlying experimental license application for which a formal request for confidential treatment had been filed previously.¹⁰⁸ By operation of our rules, therefore, this material is to be treated as confidential until we act on that previously-filed request for confidential treatment.¹⁰⁹ OET ultimately affirmed confidentiality of the redacted material in the Skywave/Toggle 2023 FOIA Denial and Skywave did not seek review of OET's action.¹¹⁰

¹⁰⁴ Coexistence Report, *supra* note 25.

¹⁰⁵ *Id.*

¹⁰⁶ See Skywave/RCA FOIA AFR at 4-5; Skywave/Five Applicants FOIA AFR at 5-7.

¹⁰⁷ Skywave/Toggle FOIA AFR at 4-5.

¹⁰⁸ Toggle Opposition 2-3.

¹⁰⁹ See 47 CFR § 0.459(d)(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

(continued....)

44. Furthermore, section 0.457(d)(2) of the Commission's rules provides that "[i]n the absence of a request for non-disclosure, the Commission may, in the unusual instance, determine on its own motion that the materials should not be routinely available for public inspection."¹¹¹ Simply put, in unusual circumstances, we retain discretion to withhold information from public inspection even in the absence of a request for confidential treatment.

45. Skywave seizes on the "unusual instance" clause, asserting that OET offered "absolutely no discussion of unusual circumstances giving rise to the exercise of discretion" and thus "OET did not have authority to exercise its discretion."¹¹² Skywave is assuming, without argument or evidence, that any omission by OET in this respect necessarily means that an unusual instance does not exist here. Skywave's assumption is unsustainable.

46. The Commission has ruled that submissions containing information that would "ordinarily be considered confidential" under Exemption 4 constitute an "unusual instance" for purposes of section 0.457(d)(2).¹¹³ In these cases, it "is only when the relevance of the [information] is not demonstrably obvious that we strictly enforce the requirements of section 0.459."¹¹⁴ There is no question here, and indeed Skywave does not dispute, that the redacted information is confidential commercial information protected by Exemption 4 of the FOIA.

47. Toggle represents that the information redacted from the application to modify its experimental license is effectively the same as was submitted with the application for the underlying experimental license, for which a request for confidential treatment was filed.¹¹⁵ Toggle states further that it "redacted details regarding its test processes and plans, hypotheses, and expected results," which information is "intrinsically related to Toggle's confidential business plans as it reveals specific details as to what Toggle hopes to accomplish and the ways in which it has attempted to achieve certain business goals."¹¹⁶

48. OET reviewed the record in this matter and confirmed Toggle's position that the information redacted from Toggle's application to modify its experimental license is confidential commercial and financial information protected under Exemption 4 of the FOIA.¹¹⁷ OET found further that Skywave did not establish why Toggle's sensitive commercial information should nonetheless be disclosed to Skywave, a competitor in the same industry.¹¹⁸ Finally, OET found that disclosure of Toggle's proprietary technology and confidential business information to Skywave likely would cause

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§ 0.459(g) and § 0.461, until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted.").

¹¹⁰ Skywave/Toggle 2023 FOIA Denial (addressing, *inter alia*, the underlying application, File No. 0642-EX-PL-2015; releasing one redacted record, withholding four records under FOIA Exemption 4, 5 U.S.C. § 552(b)(4), and withholding four records under FOIA Exemption 5, *id.* § 552(b)(5)).

¹¹¹ 47 CFR § 0.457(d)(2).

¹¹² Skywave/Toggle FOIA AFR at 4.

¹¹³ *The Western Union Telegraph Company on Request for Inspection of Records*, FOIA Control No. 86-172, Memorandum Opinion and Order, 2 FCC Rcd 4485 (1987).

¹¹⁴ *Id.* at 4486, para. 9.

¹¹⁵ Toggle Opposition 2-3.

¹¹⁶ *Id.*

¹¹⁷ Skywave/Toggle 2024 FOIA Denial at 2.

¹¹⁸ *Id.* at 3.

foreseeable harm to Toggle's competitive position by lessening the value of its innovative technology.¹¹⁹ Skywave does not dispute any of these findings.

49. We have reviewed the record and confirm OET's findings that the information redacted from Toggle's application is confidential commercial information and should be withheld from public inspection under FOIA Exemption 4. Given the lack of dispute on this question, it follows that the confidential nature of the redacted information is "demonstrably obvious" and OET therefore properly exercised its discretion under section 0.457(d)(2) of our rules in withholding the redacted material from routine public inspection.

50. That Toggle's submission is an "unusual instance" is further emphasized by the procedural posture of the application. While Toggle did not file a formal request for confidential treatment in connection with its 2023 application to modify its original experimental license, it otherwise made its intention to protect certain information from public disclosure abundantly clear. Toggle utilized the confidential filing features of the ELS to file a version of the narrative portion of its application redacted for public inspection together with a non-redacted version of the narrative branded with the appropriate confidentiality statement.¹²⁰

51. Skywave nevertheless would have us produce the unredacted narrative description of the experimental license modification application simply because Toggle did not file a formal request for confidential treatment concurrently with its 2023 modification application. Even if the confidentiality request that Toggle filed with the original application in 2015 did not largely protect the confidential information in its 2023 modification application by operation of our rules, doing as Skywave advocates would be to place form over substance and we do not agree that such a formalistic approach is warranted here. We find that OET's action was consistent with section 0.457(d)(2) and deny the Skywave/Toggle FOIA AFR.

IV. ORDERING CLAUSES

52. For the foregoing reasons, IT IS ORDERED that the Skywave/RCA FOIA Application for Review, filed November 29, 2023, the Skywave/Five Applicants FOIA Application for Review, filed November 29, 2023, and the Skywave/Toggle FOIA Application for Review, filed June 20, 2024, ARE EACH DENIED.

53. The following officials are responsible for this action: Chairman Carr and Commissioners Gomez and Trusty.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹⁹ *Id.* at 3-4.

¹²⁰ *See id.*; Toggle Communications LLC, FCC File No. 0320-EX-CM-2023, Call Sign WI2XAJ.