

December 19, 2019

**REQUEST FOR CONFIDENTIAL TREATMENT**

***Via Hand Delivery***

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: 8x8, Inc.'s Application for Numbering Authorization, WC Docket No. 19-\_\_\_\_\_

Dear Ms. Dortch,

8x8, Inc. ("8x8") hereby encloses for filing its Application for Numbering Authorization ("Application") and corresponding Confidential Exhibits A and B. Confidential Exhibit A is an interconnection agreement between 8x8 and its carrier partner, and Confidential Exhibit B consists of relevant pages of an interconnection agreement between that carrier partner and a local exchange carrier (collectively, "Interconnection Agreements"). These documents are sent to you for filing pursuant to Section 52.15(g)(3)(i) of the Commission's rules.

8x8 respectfully requests that, pursuant to 47 C.F.R. § 0.457 and § 0.459, the Commission withhold from public inspection and accord confidential treatment to the Interconnection Agreements. The documents contain trade secrets and commercial, technical, and financial information that fall within Exemption 4 of the Freedom of Information Act ("FOIA").<sup>1</sup>

Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential."<sup>2</sup> The information contained in the Interconnection Agreements constitutes trade secret and commercial and financial information, which is "of a kind that would not customarily be released to the public."<sup>3</sup> In addition, 8x8 treats the Interconnection Agreements as private, and provides them to the Commission with the understanding that the Commission will likewise treat them as private.<sup>4</sup>

Under the recent Supreme Court decision in *Food Marketing Institute v. Argus Leader Media*, this is sufficient to show that the information is "confidential" under Exemption 4 of FOIA. The submitter is not required to show that the information's disclosure is likely to cause substantial

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<sup>1</sup> 5 U.S.C. § 552(b)(4).

<sup>2</sup> *Id.*

<sup>3</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>4</sup> See *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2361 (2019).

competitive harm. Rejecting such a requirement as inconsistent with the plain text of the FOIA statute, the Court clarified: “At 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, the information is ‘confidential’ within the meaning of Exemption 4.”<sup>5</sup> Nonetheless, because the Commission’s rules ostensibly necessitate a showing of substantial competitive harm,<sup>6</sup> 8x8 addresses that prong of the analysis below.

In support of this request and pursuant to 47 C.F.R. § 0.459(b), 8x8 hereby states as follows:

**1. Identification of Specific Information for Which Confidential Treatment Is Sought (47 C.F.R. § 0.459(b)(1))**

8x8 seeks confidential treatment of Confidential Exhibits A and B. Confidential Exhibit A is an interconnection agreement between 8x8 and its carrier partner, and Confidential Exhibit B consists of relevant pages of an interconnection agreement between that carrier partner and a local exchange carrier (collectively, “Interconnection Agreements”). These documents contain the following header: “Confidential Treatment Requested—Not for Public Disclosure.”

**2. Description of Circumstances Giving Rise to the Submission (47 C.F.R. § 0.459(b)(2))**

The Interconnection Agreements are being submitted to the Commission in conformity with the rules for obtaining an authorization for numbering resources.

**3. Explanation of the Degree to Which the Information Is Commercial or Financial, or Contains a Trade Secret or Is Privileged (47 C.F.R. § 0.459(b)(3))**

The information contained in the Interconnection Agreements relates to the manner in which 8x8, its carrier partner, and the carrier partner’s local exchange carrier conduct network operations. This constitutes sensitive commercial, financial, and technical information “which would customarily be guarded from competitors.”<sup>7</sup>

**4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (47 C.F.R. § 0.459(b)(4))**

The Interconnection Agreements contain information pertaining to the provision of interconnected Voice over Internet Protocol (“VoIP”) service. The market for VoIP service is highly competitive.

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<sup>5</sup> *Id.* at 2366.

<sup>6</sup> 47 C.F.R. § 0.459(b)(5).

<sup>7</sup> *Id.* § 0.457.

**5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (47 C.F.R. § 0.459(b)(5))**

The Interconnection Agreements contain detailed information relating to operations matters that could be used by competitors to 8x8's detriment. Disclosure of that information would thereby cause substantial competitive harm.<sup>8</sup> In addition, the disclosure of the name of 8x8's carrier partner and interconnecting local exchange carrier could be used to 8x8's competitive detriment.

**6. Identification of Any Measures Taken by the Submitting Party to Prevent Unauthorized Disclosure (47 C.F.R. § 0.459(b)(6))**

8x8 has made the substance of the Interconnection Agreements known only to those employees who have a need to know the subject matter, and those employees are aware of the confidential and sensitive nature of the information. 8x8 has not disclosed the Interconnection Agreements to any non-signatories except pursuant to appropriate confidentiality agreements.

**7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (47 C.F.R. § 0.459(b)(7))**

8x8 has not previously disclosed the Interconnection Agreement to the public or to third parties, except as pursuant to appropriate confidentiality agreements.

**8. Justification of Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (47 C.F.R. § 0.459(b)(8))**

8x8 requests that the Interconnection Agreements be treated as confidential for a period of ten years. This period is necessary due to the sensitive nature of the information therein.

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Should you have questions, please do not hesitate to contact me.

Respectfully submitted,



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Brita D. Strandberg  
Courtney Miller  
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<sup>8</sup> See *Nat'l Parks and Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

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