

## § 0.453

or waiver determinations under § 0.470(e) may be sought under § 0.461(j).

NOTE TO PARAGRAPH (d): The Commission may require advance payment pursuant to § 0.469 before releasing documents.

[82 FR 4189, Jan. 13, 2017]

### § 0.453 Public reference rooms.

The Commission's main Web site at <http://www.fcc.gov> and its electronic reading room at <http://www.fcc.gov/general/freedom-information-act-electronic-reading-room> host the Commission's on-line public reference room. The Commission also maintains the FCC Reference Information Center at its offices in Washington, DC.

(a) The Reference Information Center provides access to files containing the record of all docketed cases, petitions for rulemaking and related papers. A file is maintained for each docketed hearing case and for each docketed rule making proceeding. Cards summarizing the history of such cases for the years before 1984 are available for inspection. Information summarizing the history of such cases for the years from 1984 through present is available online on the Electronic Comment Filing System (ECFS). ECFS serves as the repository for official filings in the FCC's docketed proceedings from 1992 to the present. The public can use ECFS to retrieve any document in the system, including selected pre-1992 documents.

(b) The Commission will maintain a regularly updated listing of other routinely available records in its electronic reading room at <http://www.fcc.gov/general/freedom-information-act-electronic-reading-room>.

[82 FR 4189, Jan. 13, 2017, as amended at 88 FR 21432, Apr. 10, 2023]

### § 0.457 Records not routinely available for public inspection.

The records listed in this section are not routinely available for public inspection pursuant to 5 U.S.C. 552(b). The records are listed in this section by category, according to the statutory basis for withholding those records from inspection; under each category, if appropriate, the underlying policy considerations affecting the withholding and disclosure of records in that category are briefly outlined. The

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Commission will entertain requests from members of the public under § 0.461 for permission to inspect particular records withheld from inspection under the provisions of this section, and will weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection in the light of the facts of the particular case. In making such requests, there may be more than one basis for withholding particular records from inspection. The Commission will permit inspection of records unless Commission staff reasonably foresees that disclosure would harm an interest protected by the exemptions described in 5 U.S.C. 552(b) or where disclosure is prohibited by law. The listing of records by category is not intended to imply the contrary but is solely for the information and assistance of persons making such requests. Requests to inspect or copy the transcripts, recordings or minutes of closed agency meetings will be considered under § 0.607 rather than under the provisions of this section.

(a) Materials that are specifically authorized under criteria established by Executive Order (E.O.) to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order, 5 U.S.C. 552(b)(1).

(1) Classified materials and information will not be made available for public inspection, including materials classified under E.O. 10450, "Security Requirements for Government Employees"; E.O. 10501, as amended, "Safeguarding Official Information in the Interests of the Defense of the United States"; and E.O. 13526, "Classified National Security Information," or any other executive order concerning the classification of records. *See also* 47 U.S.C. 154(j).

(2) Materials referred to another Federal agency for classification will not be disclosed while such a determination is pending.

(b) Materials that are related solely to the internal personnel rules and practices of the Commission, 5 U.S.C. 552(b)(2).

(c) Materials that are specifically exempted from disclosure by statute (other than the Government in the

Sunshine Act, 5 U.S.C. 552b, provided that such statute either requires that the materials be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of materials to be withheld, 5 U.S.C. 552(b)(3). The Commission is authorized under the following statutory provisions to withhold materials from public inspection.

(1) Section 4(j) of the Communications Act, 47 U.S.C. 154(j), provides, in part, that, "The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense." Pursuant to that provision, it has been determined that the following materials should be withheld from public inspection (*see also* paragraph (a) of this section):

- (i) Maps showing the exact location of submarine cables.
- (ii) Minutes of Commission actions on classified matters.
- (iii) Maps of nation-wide point-to-point microwave networks.

(2) Under section 213 of the Communications Act, 47 U.S.C. 213(f), the Commission is authorized to order, with the reasons therefor, that records and data pertaining to the valuation of the property of common carriers and furnished to the Commission by the carriers pursuant to the provisions of that section, shall not be available for public inspection. If such an order has been issued, the data and records will be withheld from public inspection, except under the provisions of §0.461. Normally, however, such data and information is available for inspection.

(3) Under section 412 of the Communications Act, 47 U.S.C. 412, the Commission may withhold from public inspection certain contracts, agreements and arrangements between common carriers relating to foreign wire or radio communication. Any person may file a petition requesting that such materials be withheld from public inspection. To support such action, the petition must show that the contract, agreement or arrangement relates to foreign wire or radio communications; that its publication would place American communication companies at a disadvantage in meeting the competi-

tion of foreign communication companies; and that the public interest would be served by keeping its terms confidential. If the Commission orders that such materials be kept confidential, they will be made available for inspection only under the provisions of §0.461.

(4) Section 605 of the Communications Act, 47 U.S.C. 605(a), provides, in part, that, "no person not being authorized by the sender shall intercept any communication [by wire or radio] and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communications to any person." In executing its responsibilities, the Commission regularly monitors radio transmissions. Except as required for the enforcement of the communications laws, treaties and the provisions of this chapter, or as authorized in sec. 605, the Commission is prohibited from divulging information obtained in the course of these monitoring activities; and such information, and materials relating thereto, will not be made available for public inspection.

(5) The Trade Secrets Act, 18 U.S.C. 1905, prohibits the unauthorized disclosure of certain confidential information. *See* paragraph (d) of this section and §19.735-203 of this chapter.

(d) *Trade secrets and commercial or financial information obtained from any person and privileged or confidential—categories of materials not routinely available for public inspection, 5 U.S.C. 552(b)(4) and 18 U.S.C. 1905.* (1) The materials listed in this paragraph have been accepted, or are being accepted, by the Commission on a confidential basis pursuant to 5 U.S.C. 552(b)(4). To the extent indicated in each case, the materials are not routinely available for public inspection. If the protection afforded is sufficient, it is unnecessary for persons submitting such materials to submit therewith a request for non-disclosure pursuant to §0.459. A persuasive showing as to the reasons for inspection will be required in requests submitted under §0.461 for inspection of such materials.

- (i) Financial reports submitted by radio or television licensees.

(ii) Applications for equipment authorizations (type acceptance, type approval, certification, or advance approval of subscription television systems), and materials relating to such applications, are not routinely available for public inspection prior to the effective date of the authorization. The effective date of the authorization will, upon request, be deferred to a date no earlier than that specified by the applicant. Following the effective date of the authorization, the application and related materials (including technical specifications and test measurements) will be made available for inspection upon request (*see* §0.460). Portions of applications for equipment certification of scanning receivers and related materials will not be made available for inspection.

(iii) Information submitted in connection with audits, investigations and examination of records pursuant to 47 U.S.C. 220.

(iv) Programming contracts between programmers and multichannel video programming distributors.

(v) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S.-international traffic, including the method for allocating return traffic, except as otherwise specified by the Commission by order or by the Office of International Affairs under delegated authority. *See, e.g., International Settlements Policy Reform*, IB Docket Nos. 11–80, 05–254, 09–10, RM–11322, Report and Order, FCC 12–145 (rel. Nov. 29, 2012).

(vi) Outage reports filed under part 4 of this chapter.

(vii) The following records, relating to coordination of satellite systems pursuant to procedures codified in the International Telecommunication Union (ITU) Radio Regulations:

(A) Records of communications between the Commission and the ITU related to the international coordination process, and

(B) Documents prepared in connection with coordination, notification, and recording of frequency assignments and Plan modifications, including but not limited to minutes of meetings, supporting exhibits, supporting correspondence, and documents and cor-

respondence prepared in connection with operator-to-operator arrangements.

(viii) Information submitted with a 911 reliability certification pursuant to 47 CFR 12.4 that consists of descriptions and documentation of alternative measures to mitigate the risks of non-conformance with certification elements, information detailing specific corrective actions taken with respect to certification elements, or supplemental information requested by the Commission with respect to such certification.

(ix) Confidential Broadcaster Information, as defined in §1.2206(d) of this chapter, submitted by a broadcast television licensee in a broadcast television spectrum reverse auction conducted under section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96) (the “Spectrum Act”), or in the application to participate in such a reverse auction, is not routinely available for public inspection until the reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective or until two years after public notice that the reverse auction is complete and that no such reassignments and reallocations shall become effective. In the event that reassignments and reallocations under section 6403(b)(1)(B) of the Spectrum Act become effective, Confidential Broadcaster Information pertaining to any unsuccessful reverse auction bid or pertaining to any unsuccessful application to participate in such a reverse auction will not be routinely available for public inspection until two years after the effective date.

(x) Copyrighted materials the release of which would have a substantial adverse effect on the copyright holder’s potential market, except to the extent such a release can be considered fair use.

(xi) Lists and updates of U.S.-international routes for which a carrier has an arrangement with a foreign carrier for direct termination in the foreign destination provided pursuant to §63.22(h) of this chapter.

NOTE TO PARAGRAPH (d)(1): The content of the communications described in paragraph (d)(1)(vii)(A) of this section is in some circumstances separately available through the

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ITU's publication process, or through records available in connection with the Commission's licensing procedures.

(2) Unless the materials to be submitted are listed in paragraph (d)(1) of this section and the protection thereby afforded is adequate, any person who submits materials which he or she wishes withheld from public inspection under 5 U.S.C. 552(b)(4) must submit a request for non-disclosure pursuant to §0.459. If it is shown in the request that the materials contain trade secrets or privileged or confidential commercial, financial or technical data, the materials will not be made routinely available for inspection; and a persuasive showing as to the reasons for inspection will be required in requests for inspection submitted under §0.461. 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.

(e) *Interagency and intra-agency memoranda or letters*, 5 U.S.C. 552(b)(5). Interagency and intra-agency memoranda or letters and the work papers of members of the Commission or its staff will not be made available for public inspection, except in accordance with the procedures set forth in §0.461. Normally such papers are privileged and not available to private parties through the discovery process, because their disclosure would tend to restrain the commitment of ideas to writing, would tend to inhibit communication among Government personnel, and would, in some cases, involve premature disclosure of their contents. The Commission will not use this deliberative process exemption to withhold records created 25 years or more before the date on which the request was received.

(f) *Personnel, medical and other files whose disclosure would constitute a clearly unwarranted invasion of personal privacy*, 5 U.S.C. 552(b)(6). Under E.O. 12107, the Commission maintains an Official Personnel Folder for each of its employees. Such folders are under the jurisdiction and control, and are a part of the records, of the U.S. Office of Personnel Management. Except as provided in the rules of the Office of Personnel Management (5 CFR 293.311), such folders will not be made available

for public inspection by the Commission. In addition, other records of the Commission containing private, personal or financial information will be withheld from public inspection.

(g) *Under 5 U.S.C. 552(b)(7), records compiled for law enforcement purposes, to the extent that production of such records:*

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source;

(5) Would disclose investigative techniques or procedures or would disclose 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.

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### §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