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October 28, 2009

Via Hand Delivery

Sharon E. Gillett
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: **REQUEST FOR CONFIDENTIAL TREATMENT**
Response of Google Inc. to Wireline Competition Bureau
Letter of October 9, 2009 (DA 09-2210)

Dear Ms. Gillett:

Google Inc. ("Google"), pursuant to section 0.459(a) of the Commission's Rules, hereby requests confidential treatment of the unredacted version of the attached October 28, 2009, letter from Richard S. Whitt, Google Inc., to Sharon E. Gillett, Chief of the Commission's Wireline Competition Bureau ("Google Response").

The Google Response contains information voluntarily provided by Google that falls squarely within Exemption 4 of the Freedom of Information Act ("FOIA"), which provides a statutory basis for withholding from public inspection "matters that are trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). *See also* 47 C.F.R. 0.457(d) (records not routinely available for public inspection include "trade secrets and commercial or financial information obtained from any person and privileged or confidential" under 5 U.S.C. § 552(b)(4) and 18 U.S.C. § 1905).

Specifically, Google requests confidential treatment of the following information pursuant to Exemption 4: (1) the number of Google Voice users (provided in response to Question 2), and (2) the names of third party providers with whom Google has entered into contracts to supply various telecom inputs to support Google Voice (provided in response to Question 5). Significantly, the Commission has determined that such information is subject to protection against disclosure, noting that "customer records are among the most basic business records that a company uses in furtherance of its commercial activities." *Mobile Relay Associates*, 14 FCC Rcd. 18919, 18922 (WTB 1999). Just as the Commission has determined that the number of devices a company has manufactured and distributed should be accorded confidential treatment, so too the

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number of Google Voice customers “could be used by its competitors to approximate its market share” and must be protected. *See In the Matter of Antenna Systems & Supplies, Inc.*, 20 FCC Rcd. 18972, ¶6 (EB 2005).

Contracts with third party vendors likewise have been held to be subject to FOIA Exemption 4. *See, e.g., Judicial Watch, Inc. v. FDA*, 407 F.Supp. 2d 70, 75 (D.D.C. 2005) (contract party names are “confidential commercial information that is exempt from disclosure”); *Appleton v. FDA*, 451 F.Supp. 2d 129, 142 n.7 (D.D.C. 2006) (protecting information regarding third-party contractors).

The information subject to this request is commercial information that Google customarily guards from competitors in the highly competitive market for web-based applications. *See* 47 C.F.R. § 0.457(d)(2). Google does not routinely disclose to third parties the commercially sensitive material for which it requests confidential treatment. Google has established procedures to protect this information internally, and has not previously disclosed the information.

Google respectfully requests notification by the Commission if release of the redacted material in the Google Response is requested pursuant to the FOIA or otherwise, so that Google may have an opportunity to oppose grant of any such request. *See* 47 C.F.R. § 0.459(d)(1).

Respectfully submitted,



Richard S. Whitt, Esq.
Washington Telecom and Media Counsel
Google Inc.

Attachment

cc: John Branscome