

November 21, 2018

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

RE: Omnicell, Inc.  
FCC ID 2ALLNVBM200F  
**Request for long-term confidentiality Under Sections 0.457(d) and 0.459 of the FCC's Rules**

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Dear Ms. Dortch:

On behalf of our client Omnicell, Inc. ("Omnicell"), I am writing to request long-term confidentiality for certain information associated with the application for equipment authorization for FCC ID 2ALLNVBM200F. This request is being made pursuant to the procedures for post-grant requests under KDBB 726920 D01 v01r02.

Omnicell requests confidential treatment for two elements of the application – the internal photos (labeled as Internal Photos pt 1, Internal Photos pt 2, Internal Photos pt 3, and Internal Photos pt 4 in the application) and the user manuals (labeled as User Manual, User Manual 1, and User Manual 2 in the application). As described below, this information is not publicly available and qualifies for confidential treatment under the provisions of Sections 0.457(d) and 0.459 of the Commission's Rules pursuant to the provisions of KDBB 726920 concerning requests for confidentiality in exceptional circumstances and the special conditions for long-term confidentiality for internal photos and user manuals.

*Timing of Request*

This request is being filed after grant of the underlying application, which occurred in May, 2017. Omnicell was unaware at the time the application was filed that it contained confidential information, some of which was provided to the company by a vendor. Omnicell requests that the Commission provide confidentiality for the information described herein on a prospective basis.

*Internal Photos*

KDBB 726920 allows the Commission to grant long-term confidentiality for internal photos if the applicant can show that (a) the internal components are not accessible to users or if the device is not accessible to the public; and (b) access to the photos and the device are restricted by the applicant.<sup>1</sup>

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<sup>1</sup> KDBB 726920 at 3.

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This application satisfies the first requirement because the device is not accessible to the public. The device is used in pharmacies and hospitals, and is installed in locations that are not open to the public.<sup>2</sup> It is designed to be operated with its service panels closed, and the service panels have sensors that make the device inoperable if the panels are opened.

The application satisfies the second requirement for several reasons. First, the internal photos are not made available to the public or to Omnicell's customers in any form. They were prepared for the application and used only for the application. Omnicell does not include internal photos of the device in any of its promotional materials, on its website, or in any other public-facing documents.

To the extent that Omnicell's customers could obtain access to the internal photos, they also are subject to nondisclosure requirements for any confidential information they receive. Those provisions specifically prohibit dissemination of confidential information to any third party, including assignees and contractors, without Omnicell's authorization. Under Omnicell's agreements with its customers, these obligations extend to "any information, technical data, or know-how, including the pricing included in any Omnicell document, development, inventions, processes, designs, drawings, formulas, engineering, marketing, finances, financial models, and business plans and the terms of this Agreement that is disclosed by one party to another" unless that information already is public, was known to the other party prior to the agreement, or has been "approved for release by the disclosing party."<sup>3</sup>

Second, Omnicell has company controls to ensure that confidential information, including the internal photos of the device, is not disseminated to the public. These controls include non-disclosure agreements for individuals with access to confidential materials and established practices to limit the availability of confidential information to individuals who have a business-related need for access to that information.<sup>4</sup>

Also, as noted above, access to the device is not available to the general public. The device is used in locations where the general public would not be able to reach it or to see any internal components. While users have access to some internal components, the design of the device is such that they do not have access to all of those components. Further, even to the extent that a user might have access to internal components, all users are subject to the confidentiality obligations described above, which prohibit them from disclosing any "technical data," a term that includes the internal design and configuration of the device.

For these reasons, the internal photos qualify for confidential treatment under Section 0.457(d) as trade secrets and commercial information that is privileged and confidential, and the Commission should grant long-term confidentiality for the photos.

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<sup>2</sup> Some users may install the devices in locations where customers can see them, but even in those cases members of the public would see only the outside of a device, and would not be able to see the internal components.

<sup>3</sup> An example of a standard customer agreement is attached hereto as Attachment 1. The relevant provisions are Section 10.1, which describes the confidentiality obligation, and Section 11.1, which defines the term "Confidential Information."

<sup>4</sup> A copy of Omnicell's standard Employee Proprietary Information and Invention Agreement is attached hereto as Attachment 2.

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## *User Manuals*

KDBB 726920 allows the Commission to grant long-term confidentiality for a user manual if the applicant can show that (a) the user manual "contains proprietary technical information intended for professional technicians obligated under an NDA"; and (b) all sales and distribution of the manual is under a non-disclosure agreement that restricts disclosure of the information.<sup>5</sup>

This application satisfies the first requirement because the user manuals contain detailed information concerning operation and maintenance of the device, including operating parameters, trouble-shooting information, and other information intended to be available only to authorized users.<sup>6</sup> Much of this information relates to elements of the operation of the device that are not within the scope of the Commission's authority.

The application satisfies the second requirement because it falls within the scope of the confidentiality provisions of Omnicell's master agreement. As noted above, those provisions forbid the dissemination of, among other things, "any information [or] technical data . . . that is disclosed by one party to another" unless that information already is public, was known to the other party prior to the agreement, or has been "approved for release by the disclosing party."<sup>7</sup> Confidential information may not be disseminated to any third party, including assignees and contractors, without Omnicell's authorization.<sup>8</sup>

The nondisclosure obligation is reinforced by specific language in the user manuals. The manuals provide that the "guide and accompanying software and/or hardware described in it are protected under copyright laws and may not be copied, wholly or in part, without the express written consent of Omnicell, Inc." and requires that any permitted copies of the user manuals include the same statement.<sup>9</sup>

For these reasons, the user manuals qualify for confidential treatment under Section 0.457(d) as trade secrets and commercial information that is privileged and confidential, and the Commission should grant long-term confidentiality for the manuals.

Please contact me if you have any questions about this matter.

Very truly yours,



J.G. Harrington  
*Counsel for Omnicell, Inc.*

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<sup>5</sup> KDBB 726920 at 3.

<sup>6</sup> See, e.g., User Manual 1 at 13 (describing requirements for operating environment), 14 (describing precautions for safe operation), 44 (recommendations for appropriate cleaning supplies), 55 (specific steps for cleaning MDA module and recommendations on frequency of cleaning), 68 (specific caution concerning removal of metal fittings and screws).

<sup>7</sup> Attachment 1, § 11.1.

<sup>8</sup> *Id.*, § 10.1.

<sup>9</sup> User Manual 1 at 2.

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**Inquiry Tracking Number:** **514779****Date of Original Submission:** **11/21/2018****Date of Submission:** **11/21/2018****Inquiry Details on 11/21/2018:****Inquiry:**

I am submitting this inquiry to request post-grant confidentiality for certain materials provided in connection with the application for equipment authorization for FCC ID 2ALLNVBM200F by Omnicell, Inc. A letter describing the basis for this request is attached.

### Related Sites

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Washington, DC 20554  
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